



# HOME RENTAL REHABILITATION PROGRAM OWNER'S MANUAL

May 2009

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**Please note:** All owners should be provided with a copy of the HOME Final Rule 24 CFR 92, the primary governing legislation for the federal HOME program.

To read other federal statutes and rules that are referenced in the 2009 Owner's Procedural Manual, go to <http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/> .

To find Minnesota statutes and rules go to this webpage maintained by the Office of the Revisor or Statutes: <https://www.revisor.leg.state.mn.us/pubs/> .

# Introduction

## Mission Statement

Minnesota Housing finances and advances affordable housing opportunities for low and moderate income Minnesotans to enhance quality of life and foster strong communities.

## Background

The Minnesota Housing (Agency) was established by the 1971 session of the Minnesota Legislature to finance the construction and rehabilitation of housing for families of low and moderate income. In addition to providing financing for Multifamily rental units, single family mortgage loans and home improvement loans and grants, the Agency participates in and administers other programs which assist in increasing or improving affordable housing for Minnesota residents.



# Chapter 1 – Overview

The information introduced in this manual is not intended as a full or complete description of your responsibilities under the HOME Rental Rehabilitation Program (HOME Program). You should use HUD federal regulation 24 CFR Part 92 as a guideline to program policy. We strongly encourage you to contact your local administrator with any questions.

## Program Description

Minnesota Housing's goal under the HOME Program is to preserve the supply of decent, safe, sanitary, lead-safe affordable housing for lower-income individuals and families.

This HOME Program provides moderate to substantial development rehabilitation of rental housing. At a minimum, the property must be in compliance with applicable state and local codes, rehabilitation standards, ordinances, Section 8 Housing Quality Standards (HQS), zoning ordinances and be lead safe. These standards must be met at completion and through the Effective Period. The Effective Period marks the time during which the HOME units must remain in compliance with HOME Program guidelines. The Effective Period is five years for loans less than \$15,000 per HOME-assisted unit and ten years for loans between \$15,000 and \$40,000 per HOME-assisted unit. **The Effective Period begins the day after final disbursement of HOME funds, which occurs after project completion.**

Developments obtaining **\$100,000 or greater** in HOME assistance will receive a **0% deferred loan**:

- Repayment is required upon the earlier of:
  - sale or transfer of the Mortgaged Property
  - payment in full of the permanent senior mortgage loan on the Mortgaged Property
  - maturity date of any permanent senior mortgage loan on the Property, or
  - An occurrence of an Event of Default as outlined in the HOME mortgage.
- Property Owners may obtain financing for 100% of HOME-eligible costs as long as the HOME expenditures do not exceed the established maximum allowance per HOME-assisted unit.
- Property Owners must have existing financing on the property with a mortgage maturity date that extends beyond the Effective Period.
- Properties will be monitored for compliance with affordability and property standards during the Effective Period. See Chapter 6 for full details.

Developments obtaining **less than \$100,000** in HOME assistance will receive a **0% loan that will be forgiven after a successful Effective Period**:

- Repayment is required upon:
  - sale or transfer of the mortgaged property prior to the expiration of the Effective Period, or
  - An occurrence of an Event of Default as outlined in the HOME mortgage, and occurring prior to the expiration of the Effective Period.
- Property Owners must provide a minimum of 25% of the HOME-eligible costs.
- Forgivable loans are end loans; therefore, borrowers will be required to obtain construction financing or provide evidence of available funds during the construction period in the amount of the total development cost (TDC).
- Properties will be monitored for compliance with affordability and property standards during the Effective Period. See Chapter 5 for full details.

**This HOME Rental Rehabilitation program is not available in St. Paul, Minneapolis, Duluth and the counties of Anoka, Cook, Dakota, Hennepin, Itasca, Koochiching, Lake, Ramsey, St. Louis, and Washington as those areas have their own set aside of HOME funds and programs.**

## Chapter 2 – Owner Responsibilities Checklist

The following checklist summarizes your primary responsibilities as the property owner and borrower in the HOME Rental Rehabilitation Program. The page numbers refer to the sections in the 2009 HOME Rental Rehabilitation Owner's Manual where detailed descriptions of the requirements may be found. The Property Owner is responsible for reading and complying with the 2009 Owner's Manual in its entirety.

Please note that as the property owner and borrower, you are responsible for all actions of your agents that affect compliance with the program's requirements. Your agents include, but are not limited to, realtors, management agents, and maintenance workers. **Failure to comply with requirements can have significant financial costs to you, including immediate repayment of the loan.**

**Please read and initial each section. If selected, I/we, the applicant(s) for HOME funds, hereby certify to comply with the following:**

\_\_\_\_\_ (1) **Rent HOME Units Only to Households with Eligible Incomes**

Tenants occupying HOME-assisted units must be eligible based upon their gross annual household income. Please refer to pages 13 through 20 in Chapter 4 of the Owner's Manual for more detail on income and rent limits

\_\_\_\_\_ • **Initial Documentation: Tenant Surveys and Income and Asset Verification:**

Before loan commitment, collect Tenant Surveys for existing and new tenants. For each tenant household, verify income and assets using third party verification or a review of source documents, and certify the tenant survey. Submit a copy of all documents to the local administrator and report the data to Minnesota Housing. At project completion and throughout the Effective Period, complete this process for each new HOME household, and regularly submit tenant data to Minnesota Housing (pages 14-15 in Chapter 4).

\_\_\_\_\_ • **Annual Recertification:**

Each year on the anniversary of the previous certification or recertification, obtain a new Tenant Survey from existing tenants to recertify income, rent, and household size. It is not necessary to verify income at recertification. Submit the updated data to Minnesota Housing. At recertification, if a household's income has increased above HOME program limits, refer to the Owner's Manual to avoid defaulting on your loan (page 16 in Chapter 4).

\_\_\_\_\_ (2) **Maintain Rents Below the Applicable HOME Rent Limits**

Rents for HOME-assisted units must be maintained at or below the applicable HOME Rent limits during the Effective Period. Rent includes rent paid by the tenant, a utility allowance for any utilities the resident is responsible to pay, plus any rental assistance or rent subsidy. Rent increases cannot violate lease terms and, if more than 5% require the prior written approval of the local administrator or Minnesota Housing. See page 13 in Chapter 4 for HOME Program Rent Limits.

\_\_\_\_\_ (3) **Construction Considerations**

- \_\_\_\_\_ • The HOME Program can only fund rehabilitation costs attributed to your HOME eligible units (pages 11, 12 and 17-20 in Chapter 4).
- \_\_\_\_\_ • If your project has 12 or more HOME-assisted units, federal Davis-Bacon labor standards apply (Chapter 10)
- \_\_\_\_\_ • This program falls under the Uniform Relocation Act. Tenant displacement will result in your HOME loan being in default. Follow the procedures in Chapter 12 to avoid tenant displacement.

(4) **Maintain Property According to Housing Quality Standards**

- **Inspections:** The local administrator or Minnesota Housing is required to periodically inspect your property during the Effective Period to ensure it continues to meet Housing Quality Standards. If deficiencies are found, you must immediately take action to correct the noncompliance (Chapter 7)
- (a) **Lead Requirements:** If your property was built before 1978 and you do not have a lead inspection that verifies the property contains no lead-based paint, you must:
  - (b) A novide ongoing nually and at unit turn-over, provide for a visual assessment of paint in units and common areas by qualified personnel; and prpaint maintenance by qualified personnel (Chapter 8).
- When renting a unit built before 1978, you must provide evidence that each HOME household has been given a copy of the "Lead Warning Statement" required by federal regulations (page 58 in Chapter 13).

(5) **Preservation of Rental Assistance**

If you receive project-based federal assistance, you will be required to sign a document which prevents you from opting-out of federal rental assistance contracts for as long as the rental assistance is offered (page 6 in Chapter 3)

(6) **Leasing Units**

- Affirmatively market vacant units. If the project has 5 or more units, the local administrator will help you develop and implement an Affirmative Fair Housing Marketing Plan (pages 45-47 in Chapter 9).
- Do not use prohibited lease terms and conditions (page 56 in Chapter 13)
- Use required tenant selection criteria (page 57 in Chapter 13).

(7) **Long-term Servicing of Your Loan**

- Minnesota Housing will not subordinate its Declaration of Covenants, Conditions, and Restrictions during the Effective Period unless proceeds are used for the benefit of the property. (page X in Chapter 3)
- Partial Releases of Mortgage are considered on a case by case basis (page 24 in Chapter 5 for Forgivable Loans; page 29 in Chapter 6 for Deferred Loans).

(8) **Retain Records**

Documentation of HOME eligibility, including all verifications and Tenant Surveys must be maintained in tenant files by unit and made available to the Local Administrator or Minnesota Housing upon request. The Local Administrator or Minnesota Housing is required to perform periodic inspections of tenant files and other pertinent documentation. Tenant records must be retained for five years after the end of the Effective Period.

**Failure to comply with the above requirements, failure to correct noncompliance and/or refusal of inspections will cause the property to be in default and may require immediate repayment of the loan.**

## Chapter 3 - General

### Allowable Per Unit Costs

The maximum HOME assistance is \$14,000 per unit, with a minimum total project loan request of \$10,000. For most projects, the Effective Period for compliance is five years. For qualified developments that preserve existing federally-assisted units for a minimum of 10 years, Minnesota Housing may consider **a maximum of \$40,000** per unit in HOME assistance. Developments receiving between \$15,000 and \$40,000 per unit in HOME assistance have a 10 year Effective Period.

### Subordination to Declaration of Covenants, Conditions and Restrictions

Minnesota Housing requires all lenders in a senior position to agree to subordinate their mortgage to the HOME Program's Declaration of Covenants, Conditions and Restrictions prior to entering into a loan commitment.

Begin talking to senior lien holders as soon as possible to determine if they are willing to execute the subordination. Otherwise, you may incur processing costs for applications that will not be successful. If a lender is not able to meet this requirement, Minnesota Housing will not fund the loan.

### Preservation of Rental Assistance

In addition to the Minnesota Housing HOME Program Declaration of Covenants and Restrictions, any property owner of a development receiving Rental Assistance (i.e. Rural Development, HUD 236, Section 8, etc.) will be required to sign a rental-assistance Declaration of Covenants and Restrictions, which contains restrictive covenants preventing the property owner from opting-out of federal rental assistance contracts.

### Designation of HOME-assisted Units

In a mixed-income development (where some, but not all, units meet the HOME affordability requirements), you must determine whether the HOME-assisted units are "fixed" or "floating". This determination will remain throughout the Effective Period and will impact your rents and HOME eligibility. Please see page 17 & 17 in **Chapter 4: Eligibility and Documentation** for details and specific instructions.

### Local Administrator

Property owners will work with local administrators at application, during construction, and through the Effective Period. The local administrator is an independent contractor that has entered into an agreement with Minnesota Housing to administer the HOME Program; therefore, the local administrator may establish a selection process and/or criteria more restrictive than that of Minnesota Housing. The local administrator will assist property owners with conducting inspections, preparation of bid specifications/scope of work, obtaining bids, qualifying tenants, etc.

The local administrator may charge an application fee to process HOME Program applications. The following is the allowable pay schedule:

- \$100 per unit with a suggested minimum of \$500 per project and a maximum of \$3000 per project.

The application fee was developed to:

- compensate local administrators for expenses incurred for applications that do not reach commitment;
- discourage frivolous applications;
- ensure a development's full compliance with HOME Program regulations.

If the local administrator selects your application, the fee is incorporated into the development budget. If your application is not selected, the local administrator may choose, but is not required, to return part or all of the application fee. Before collecting your application fee, the local administrator must disclose its policy regarding returning fees.

## **Initial Inspections**

The following types of inspections are required prior to preparation of bid specification/scope of work:

- Property inspection to identify any deficiencies under applicable state and local codes, rehabilitation standards, ordinances, HQS and zoning ordinances.
- Energy audit
- If the U.S. Department of Agriculture Rural Development (RD) is the first mortgage holder, the RD construction specialist must conduct an inspection of the property.
- Developments built prior to 1978, must have a certified Risk Assessor perform a Lead Hazard Evaluation of the property, unless the borrower presumes the presence of lead-based paint or lead-based paint hazards and standard treatments are employed.
- Developments obtaining Minnesota Housing loan(s) in excess of \$300,000 are required to have a Phase I Environmental Site Assessment per ASTM E 1527 including a Lead Hazard Evaluation as reference above (if built pre 1978) and an asbestos survey with remedies. If the Phase I is not specifically addressed to Minnesota Housing, the owner must obtain a reliance letter from the assessor, in a format acceptable to Minnesota Housing.
- Developments obtaining Minnesota Housing loan(s) in excess of \$300,000 may be subject to review by a Minnesota Housing architect.

Minnesota Housing also encourages property owners to engage the local building inspector in the initial inspection process. Conducting these inspections early in the development planning and budgeting phase will assure that all local property standards, HQS, local building code, lead-based paint hazards and other deficiencies are identified and included in the preparation of the bid specification/scope of work.

## **Preparation of Bid Specification/Scope of Work**

After performing initial inspections, the local administrator will determine what items to incorporate in the work scope, to ensure the property will comply with applicable state and local codes, rehabilitation standards, ordinances, HQS, zoning ordinances and be lead safe at completion and through the Effective Period. Some of the required items include:

- Deficiencies indicated on the Property Inspection Report
- Items listed on the energy audit with a simple payback of seven years or less
- Recommendations by the RD construction specialist (if applicable)
- Recommendations by Risk Assessor regarding lead-based paint (if applicable)
- Remedies indicated in the Phase I Environmental Site Assessment (if applicable)
- Davis-Bacon Labors Standards (if applicable). Refer to Davis-Bacon section of this Owner's Manual to see if this applies to your project.
- Section 3 requirements (if applicable). Refer to Affirmative Action, Fair Housing, and Equal Economic Opportunity section of this Owner's Manual to see if this applies to your project.

The following deficiencies must be incorporated in the scope of work: Life safety, Structural/Building Envelope, and Handicapped accessibility as per 24 CFR Part 8, Subpart C, 8.23. Other deficiencies (i.e. appliances, cosmetic enhancements) may be completed upon funding availability.

Many developments may require substantial changes and a scope of work that demands professional assistance in planning. Minnesota Housing will require plans and specifications to be prepared by a licensed architect or licensed engineer if required by state statute or if Minnesota Housing determines that the work scope warrants the services of an architect.

## **Obtaining Bids**

The local administrator will provide assistance to the property owner in obtaining bids by devising bid and proposal forms, scope of work forms, or other forms that may be of help in obtaining adequate bids and bids from diverse companies and companies with diverse workforces. *Refer to Affirmative Action, Fair Housing, and Equal Economic Opportunity section of this Owner's Manual.*

To ensure reasonable costs, Minnesota Housing requires the property owner to obtain a minimum of two competitive bids from licensed single prime general contractors.

Once the property owner and contractor agree on the work scope and associated costs, a construction contract must be executed between the property owner and the single prime general contractor. Minnesota Housing requires an American Institute of Architects (AIA) form of owner-contractor agreement for developments obtaining \$100,000 or greater in HOME assistance.

Minnesota Housing requires contractor surety when a property owner will be obtaining a Minnesota Housing construction loan and the deferred loan amount is \$300,000 or greater.

Contractor surety shall be provided by the single prime general contractor via AIA performance bond and AIA labor and material payment bond naming Minnesota Housing as lender/obligee.

## **Monitoring Construction Process**

### ***Forgivable and Deferred End loans***

The local administrator, the borrower and/or the management agent shall conduct periodic site inspections during the construction period to ensure work is proceeding according to work scope. The local administrator must certify that lead-safe work practices were observed during site inspection when applicable, per section 24 CFR Part 35.

### ***Construction Loans***

The local administrator must be present at all draw meetings to ensure that Minnesota Housing's interests and program rules are being met. The local administrator must certify that lead-safe work practices were observed during site inspection by noting the file, per section 24 CFR Part 35, when applicable.

## **Change Orders**

Minnesota Housing may, at its discretion, authorize the expenditure of funds in excess of the approved loan amount, not to exceed program maximums. If the expenditure of funds is less or greater than the approved loan amount, the property owner must submit the following to Minnesota Housing:

- Written explanation of any increase and/or decrease, with the new and/or amended bid(s) or invoice(s)
- Minnesota Housing change order form indicating the increase/decrease in loan amount

- Revised list of improvements/sworn construction statement

The property owner may not authorize the commencement of any additional work or the expenditure of any additional funds until receipt of written approval of the increase from Minnesota Housing.

## **Development Monitoring**

### ***After rehabilitation is completed, and before the Effective Period begins:***

- You will give Tenant Surveys for each HOME unit to the local administrator. The Tenant Survey includes the tenants' certification of income, contract rent, and number of household members. The Tenant Surveys must be supplemented by third-party income verification or source documentation.
- The local administrator will review tenant eligibility for each HOME unit and submit the data to Minnesota Housing.

### ***On an annual basis:***

- You will submit updated Tenant Survey(s) to the local administrator so they can determine whether rent and income standards are still being met.
- The local administrator will recertify the information by using one or more of the following practices: visual inspection of the unit, tenant interviews, or viewing borrowers' rent records.
- For any new tenant households in HOME units, you will provide the local administrator with third-party income verification or source documentation. Developments with a 10 year Effective Period require an additional round of income verification by a third party or source documentation. This occurs in the sixth year.

### ***Periodically:***

The local administrator will perform on-site inspections based on the following monitoring schedule:

- 1-4 units/every 3 years during the Effective Period
- 5-25 units/every 2 years during the Effective Period
- 26+ units/yearly during the Effective Period

### **These inspections include:**

- Housing Quality Standard (HQS) inspections of every HOME-assisted unit
- A file review of federally-required documents, e.g. Affirmative Marketing Plan, records of URA and Lead Notices, signed Lease Addendums and Data Practices Act notices.

### ***Late or Missing Compliance Documentation***

#### **If you do not send tenant documents to the local administrator upon request:**

- Minnesota Housing will be notified of the non-compliance and will take action immediately upon lapse of the annual recertification date.

#### **If affordability requirements are not being met:**

- The local administrator will notify you, in writing, of the specific instances of non-compliance. If you do not bring the project into compliance in the time specified by the local administrator, the matter will be turned over to Minnesota Housing, and may result in repayment of the loan or extending the Effective Period.



## Chapter 4 – Eligibility and Documentation

### Ownership

The property owner must provide evidence of a qualifying interest in the property with such interest recorded and appearing in the records of the county. Properties owned by a trust are not eligible to apply for HOME loans. Minimum qualifying interests are:

- 100% fee simple interest, which may be subject to a mortgage
- 100% interest as a purchaser in a contract for deed (forgivable loans only)

Any employee, agent, consultant, officer, or elected or appointed official of Minnesota Housing or of any local administrator that has responsibilities with respect to the HOME Program, or has access to inside information regarding HOME Program activities, may not obtain a personal or financial interest or benefit from such a contract, subcontract, or agreement, either for themselves or those with whom they have family or business ties, during their tenure, or for one year thereafter.

Property owners will be required to provide evidence of title in the form of a current owners and encumbrance report or commitment for title insurance policy, depending on the amount of HOME assistance received. Title must show that the property is vested in the property owner and is free from any liens or exceptions to title, other than the lien created by the HOME loan and other liens and exceptions to title that are consented to by Minnesota Housing in writing.

For purposes of determining an organization's ability to borrow from Minnesota Housing, the property owner must submit to the local administrator the following for review and approval:

1. Corporations must provide:
  - A. Certified Articles of Incorporation and amendments, if any.
  - B. Certified Bylaws and amendments, if any.
  - C. Borrowing Resolution containing the following:
    - (1) authority to own and operate rental property;
    - (2) authority to borrow HOME funds and execute Minnesota Housing loan documents;
    - (3) name and title of officer(s) authorized to execute loan documents.
    - (4) Certificate of Good Standing filed with Minnesota Secretary of State's Office and dated within 30 days prior to the execution of loan documents.
2. General Partnerships must provide:
  - A. Partnership Agreement and amendments, if any.
    - (1) Term of the partnership must be for at least the term of Minnesota Housing's HOME loan.
    - (2) There must be at least two general partners.
    - (3) All general partners are required to sign Minnesota Housing's loan documents.
  - B. Borrowing Resolution of corporate general partner(s). Refer to 1.C. (1) through (3), above, for requirements.

*Note: Borrowing Resolution is not necessary for individual general partner(s).*

3. Limited Partnerships must provide:
  - A. Certificate of Limited Partnership filed with Minnesota Secretary of State's Office.
    - (1) Term of the partnership must be for at least the term of Minnesota Housing's HOME loan;
  - B. Limited Partnership Agreement and amendments, if any.



- (1) Term of the partnership must be for at least the term of Minnesota Housing's HOME loan;
- (2) All general partners are required to sign Minnesota Housing's loan documents.
- C. Borrowing Resolution of corporate general partner(s). Refer to 1.C. (1) through (3), above, for requirements.
- D. Certificate of Good Standing filed with Minnesota Secretary of State's Office and dated within 30 days prior to the execution of loan documents.

*Note: Borrowing Resolution is not necessary for individual general partner(s).*

4. Limited Liability Companies (LLCs) must provide:

- A. Certified Articles of Organization and amendments, if any.
- B. Certified Operating Agreement/Bylaws and amendments, if any.
- C. Certified Member Control Agreement (if applicable) and amendments, if any.
- D. Borrowing Resolution of corporate member(s). Refer to 1.C. (1) through (3), above, for requirements.
- E. Certificate of Good Standing filed with Minnesota Secretary of State's Office and dated within 30 days prior to the execution of loan documents.

5. Municipalities or Local Units of Government (i.e., HRA, EDA) must provide:

- A. Enabling resolution and minutes from the city council establishing the local unit of government.
- B. Certified Bylaws and amendments, if any.
- C. Borrowing Resolution. Refer to 1.C. (1) through (3), above, for requirements.

## **Eligible Properties**

- Properties may contain one or more buildings on a single site and may be scattered on more than one site, if the properties are under common ownership, management and financing, and all housing units are being rehabilitated as part of a single undertaking.
- Properties must conform to all applicable zoning ordinances and possess all appropriate use permits.
- Properties must be used primarily for residential purposes (51% or more of the gross floor area of each structure must be residential space).
- Properties must be a permanent structure.
- Properties must meet local administrators' selection criteria.

## **Ineligible Properties**

- Developments under the Emergency Low Income Housing Preservation Act of 1987 or the Low-Income Housing Preservation and Resident Homeownership Act of 1990.
- Minnesota Housing or other federally assisted developments that have reserves sufficient to capitalize improvements.
- Minnesota Housing or other federally assisted developments that pre-paid their mortgage within the previous 5 years.
- Minnesota Housing financed developments that are actively participating in the Redefined Equity Program.
- Public Housing Developments.
- Developments previously funded under the Home Investment Partnership Program that are still within their Effective Period.
- Developments owned by borrowers that previously received HOME assistance and did not successfully maintain compliance with affordability and property standards requirements or otherwise defaulted on the mortgage.
- Other Housing Developments (e.g., shelters, transitional housing, nursing homes, and assisted living facilities).
- Developments where bankruptcies appear against the property and/or where there are outstanding liens or judgments filed against the property.
- Developments with a history of negative cash flow.

## **Eligible Improvements/Expenses**

- Permanent improvements;
- Improvements that bring the property into compliance with applicable state and local codes, rehabilitation standards, ordinances, HQS, zoning ordinances and which are lead safe;
- Acquisition costs may be included as an Eligible Improvement/Expense, but only when calculating allowable HOME assistance.

## **Ineligible Improvements/Expenses**

Ineligible improvements include, but are not limited to, the following:

- New construction
- Installation of window unit air conditioners, unless previously provided and owned by the development
- Recreational or luxury improvements
- Installation of fireplaces or wood burning stoves
- Sweat equity for the property owners own labor
- Materials purchased prior to loan commitment
- Acquisition that is not in conjunction with rehabilitation of the development.
- Improvements that started prior to loan commitment
- Non-fixed improvements (equipment and furnishings not considered part of the real estate)
- Materials, fixtures or landscaping of a type or quality exceeding that customarily used in similar neighborhood properties
- Change orders not approved by Minnesota Housing prior to commencement of work

Ineligible improvements/expenses may be completed at the expense of the property owner.

## **Eligible Soft Costs**

- Professional services beyond those provided by the local administrator, such as architectural fees
- Developer fees up to 5% of HOME loan (for deferred loans only).
- Local administrator's processing fee (total of processing fee and application fee may not exceed 10% of HOME loan)
- Costs associated with obtaining housing tax credits
- Temporary relocation costs

## **Ineligible Soft Costs**

Ineligible soft costs include but are not limited to the following:

- Application fee
- Management agent fees
- Developer fees in excess of 5% of HOME loan
- Monitoring fees
- Operating or replacement reserves

## Rent and Income Eligibility

The local administrator will work with you to determine eligibility by reviewing the rents and incomes of the residents. The HOME Program rent and income schedule is available through the Minnesota Housing website at <http://www.mnhousing.gov/partners/limits/index.aspx>.

The requirements are as follows:

No. of HOME Units	Income Requirements at Initial Certification	Income Requirements After Initial Certification	Rent Requirements
1 – 4	60% area median income (AMI)	80% AMI	Lower of Fair Market Rent (FMR) or 65%* rent limit
5 +	100% of units are occupied by households with incomes lower than 80% AMI, with these requirements:		
Very low income / Low Rent	At least 20% of the units must be occupied by very low income households, at 50% AMI or less	At least 20% of the units must be occupied by very low income households, at 50% AMI or lower.	At least 20% of the units must pay the lower of FMI, 50% rent limit, or 30% of the family's adjusted income
Low income / High Rent	Up to 10% of the units may be occupied by households above 60% AMI	The remaining 80% of the units may be occupied by households above 60% AMI (up to 80% AMI)	The remainder of the units may pay the lower of FMR or 65%* rent limit

Note: You must have at least 10 HOME-assisted units to qualify for one unit with a household at 80% AMI.

\*If you are receiving the benefit of Low Income Rental Classification (LIRC), all LIRC units must comply with LIRC Rent and Income Restrictions.

## Rent Increases

- For existing tenants:
  - No rent increases are allowed for HOME-assisted units from the application date to one year after development completion.
  - During the Effective Period, rent increases are limited to 5% per year after the first year, and must be within reasonable limits to cover increases in expenses such as real estate taxes or operating expenses
- For lease-up of a previously vacant unit, or at unit turnover:
  - Rents may be increased over 5%
- All increased rents must remain within HOME Program limits.
- All rent increases must receive written approval by the local administrator. Approval can only be granted after the borrower submits a written request for a rent increase accompanied by a schedule of current rents and proposed rents by unit size and bedroom type.
- Tenants must be notified at least one month in advance of the rent increases.
- All rent increases must be in accordance with lease terms and applicable laws.

**In the event rents are increased without the approval of the local administrator, the borrower may be required to reduce the rents and make restitution to affected tenants. Tenants may claim economic displacement under the Uniform Relocation Act as a result of unauthorized increases. Refer to Chapter 12: Uniform Relocation Act.**

## Tenant Surveys

You must provide each tenant a copy of a Tenant Survey (HOME Form 5). You can get a copy of this form from the local administrator. The Tenant Survey is a written statement from the household indicating family size and annual income. These must be completed and signed by all existing tenants and will help determine the number of HOME-assisted units. Upon determination of eligibility, the local administrator must submit copies of the Tenant Surveys for the designated HOME-assisted households as part of the application package. The surveys are confidential and include income and demographic data of each household. Minnesota Housing requires this information for its program assessment database, which is analyzed annually for reporting to the legislature and HUD on the types of households that Minnesota Housing serves. Minnesota Housing does **not** collect data on non-HOME-assisted units.

New tenants moving into a HOME-assisted unit from application to the end of the Effective Period must complete a Tenant Survey.

## Determining Household Size and Household Income

Once household and income information has been established and verified, you must determine if the household is eligible for participation in the HOME Program.

The income limits are adjusted by household size; therefore, the first step in determining eligibility is to determine the size of the household. Some households may include persons who are not counted as family members for the purpose of income limits and whose income, if any, is not considered when calculating annual income.

Do not count the following household members when determining family size for income limit purposes:

- Foster children
- Live in aides and children of live in aides
- Children being pursued for legal custody or adoption who are not currently living in the household

A child who is subject to a shared-custody agreement in which the child resides with the household at least 50% of the time can be counted.

Knowing whose income to count is as important as knowing which income to count. Income earned by the following groups of people **is not counted**:

- Earned income of minors (age 17 and under)
- Income of live-in aides

Income earned by the following groups of people **is counted**:

- Temporarily absent family members
- Adult students living away from home (first \$480 of income)

Types of income to be counted include:

- The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services
- Net income from the operation of a business or profession
- Interest, dividends, and other net income of any kind from real or personal property
- The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts
- Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay
- Welfare Assistance

- Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling
- All regular pay, special pay and allowances of a member of the Armed Forces

## **Income Verification**

You are required **to work with the local administrator** to verify income eligibility of tenants prior to submission of an application packet to Minnesota Housing. You can use either of the two forms of verification: (1) third party verification or (2) source documentation.

### ***Third-Party Verification***

Under this form of verification, a third party (e.g., employer, Social Security Administration, or public assistance agency) is contacted to provide information. Although written requests and responses are generally preferred, conversations with a third party are acceptable if documented through a memorandum to the file that notes the contact person, information conveyed and date of call.

To conduct third party verifications, you must obtain a written release from the household that authorized the third party to release required information. This method is helpful because it provides independent verification of information and helps you determine if any changes to current circumstances are anticipated. Some third-parties, however, may be unwilling or unable to provide the information in a timely manner.

Some third-party providers (such as banks) may charge a fee for the information. In such cases, you should attempt to find suitable documentation without the third-party verification – for example, bank statements or a savings passbook. If suitable documentation is not available, costs associated with the third party verifications are considered HOME-eligible expenses. Tenants must **not** be required to pay for verifications.

### ***Review of Documents***

Documents provided by the tenant (e.g. pay stubs, tax returns, etc.) may be appropriate for certain types of income and can be used as an alternative to third party verifications. (Note, however, that if a copy of a tax return is needed, IRS Form 4506 "Request for Copy of Tax Form" must be completed and signed.) Copies of documents must be retained in development files.

Although easier to obtain than third-party verifications, a review of documents often does not provide needed information. For instance, an employed applicant's pay stubs may not provide sufficient information about the average number of hours worked, overtime, tips and bonuses. In this case, a conversation with a third party may be necessary to accurately project annual income.

## **Additional Requirements**

- If the income certification occurs more than 6 months before loan commitment, the property owner must perform an Income Recertification using the same method as the Annual Income Recertification.
- Developments with a 10-year Effective Period require in the sixth year an additional round of income verification through third-party verification or source documentation, for all tenants in HOME units.

## **Annual Income Recertification**

Property owners must annually recertify the incomes of tenants occupying HOME-assisted units. The deadline and effective date of each recertification is one year from the last recertification date. To avoid penalties for late submission, begin the process 60 to 90 days prior to the deadline.

You will collect new Tenant Surveys (HOME Form 5) from the tenant households in HOME-assisted units to determine whether they are still eligible. This must include a certification from the household that information is complete and accurate, and source documents could be provided upon request. For existing tenants (those who occupied HOME units during the last recertification), the local administrator will recertify by visual inspection of the unit, tenant interviews, or viewing your rent records. For any new tenant households in HOME units, you will provide the local administrator with third-party income verification or source documentation.

To obtain a complete copy of the "Technical Guide for Determining Income and Allowance for the HOME Program" and sample forms, visit the website listed below:

<http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/1780.cfm>

## **Income Temporary Non-Compliance**

A tenant's income is likely to change over time. If these changes occur during the Effective Period, you must maintain compliance with HOME affordability requirements.

- The development must maintain the correct number of HOME-assisted units
- Rents must be adjusted for tenants whose incomes rise above 80% of the area median income

Use the following steps to maintain the correct number of HOME-assisted High Rent (income is between 50% AMI and 80%AMI) and Low Rent units:

- If the income of a tenant occupying a Low HOME Rent unit increases above 50 percent of the area median income, but does not exceed 80 percent of area median income, that unit becomes a High HOME Rent unit. If this results in less than 20% of HOME units being Low HOME Rent, and there are 5 or more units in the development, then you must replace the Low HOME Rent unit. To replace the Low HOME Rent unit, the borrower must rent the next available unit (for "floating" unit projects) or HOME-assisted unit (for "fixed" unit projects) to a tenant at or below 50 percent of the area median income. Subject to the terms of the lease, the rent of the initial tenant whose income has increased may be increased to the High HOME rent for the unit. This process should not increase the number of assisted units.
- If the income of a tenant occupying a HOME-assisted unit increases above 80% of the area median income, the unit this tenant occupies is still considered to be a HOME-assisted unit, but the tenant must pay 30% of their adjusted gross income for rent and utilities. Exceptions: (1) Tenants of HOME-assisted units that have been allocated low-income housing tax credits. (2) Rent for a "floating" unit development is not required to exceed the market rent for comparable, unassisted units in the neighborhood. There is no rent cap for a "fixed" unit development. (3) In a floating unit development, the next available unit of comparable size or larger must be rented to a HOME-eligible household. The unit occupied by the over-income tenant is then no longer considered HOME-assisted. (4) Adjusted Rents cannot violate the terms of the lease.

## Unit Comparability Analysis

If you have two or more units, the local administrator or property owner must use this process to calculate the amount of HOME funds the project can receive. Then, use the following methods to do a unit comparability analysis on both eligible and non-eligible units (These methods are also available on a separate Unit Comparability and Cost Allocation Worksheet):

**Step 1.** First, determine the number of units eligible based on income of tenants.

**Step 2.** Organize data within the table by the number of bedrooms in each unit. For example, list all one-bedroom units first, followed by two-bedroom units, etc.

Apt. number or other unit identifier	Number of Bedrooms	Unit Square Footage	Are Amenities Comparable? (Y/N)

**Step 3.** Determine if amenities among units with the same number of bedrooms are comparable. When determining amenity comparability, exclude from the consideration amenities that are paid for by the tenant to the owner as an addition to rental of the living unit itself; for example, a garage if it is optional. If the amenities are comparable, go to step 4. If the amenities are not comparable, go to step 6.

**Step 4.** Determine the square footage area of each unit. If the largest unit is no more than the greater of 50 square feet or 5% larger than the smallest unit, the units are considered to be comparable in terms of area. For example, if the largest one-bedroom unit has 800 square feet and the smallest 700 square feet, the larger unit is 14.3% larger than the smallest and more than 50 square feet larger, so the units are not comparable in area. If the smallest unit is 700 square feet and the largest is 750 square feet, the largest is 7.1% larger but no more than 50 feet larger than the smallest unit, so the units are comparable in area.

Repeat this comparison for other units with the same number of bedrooms.

If all units with the same number of bedrooms are comparable in area, go to step 5. If they are not comparable in area, go to step 6.

**Step 5.** You have determined that all units with the same number of bedrooms are comparable in terms of area, and amenities.

**(a) Designation of HOME-assisted Units and Cost Allocation.** The owner may select to have the HOME units be either fixed or floating. If floating, HOME tenants may float up to larger units, but they may not float down to smaller units. (REMINDER: In order to use the floating method, the HOME assisted units must be comparable to the non-HOME assisted units.) If fixed, the designated units must be occupied by tenants who meet the income and rent limitations of the HOME Program for the Effective Period.

In a mixed-income development (that is, not all units meet the affordability requirements), you must determine whether the HOME-assisted units are “fixed” or “floating”. You must carefully consider these options and the effects of each.



### Fixed Units:

The HOME-assisted units remain the same through the Effective Period. The HOME-assisted units must be maintained to applicable state and local codes, rehabilitation standards, ordinances, HQS, zoning ordinances and be lead safe at completion and through the Effective Period.

### Floating Units:

The HOME-assisted units may change during the Effective Period so long as the total number of HOME-assisted units, in the development, remains the same and the substituted units are comparable in size, features, and number of bedrooms to the originally designated units. All units in the development must be maintained to applicable state and local codes, rehabilitation standards, ordinances, HQS, zoning ordinances and be lead safe at completion and through the Effective Period.

**(b)Determine which units are occupied by income-eligible tenants.** HOME may only pay a share of HOME-eligible costs that is proportionate to the number of units that are occupied by HOME income-eligible tenants and designated as "HOME units." Determine the per unit HOME costs by the "Comparable Unit Method."

**Step 6.** You have determined that the units are not comparable. The HOME assisted units must be fixed, not floating. Determine the per unit HOME costs by the "Non Comparable Unit Method."

### ***Comparable Unit Method of Cost Allocation***

1. Determine the HOME-eligible costs of the project	\$
2. Determine the percentage of units that will be designated "HOME units"	%
3. Multiply lines 1 and 2	\$
4. Number of designated "HOME units"	
5. Multiply Line 4 by \$14,000 per unit limit	\$
6. Maximum HOME assistance. Take the lesser of Lines 3 and 5	\$
7. Gap financing required. Subtract line 6 from line 1.	\$

### Instructions for Comparable Unit Method worksheet

1. Refer to the lists of Eligible and Ineligible costs in Chapter 3 of this Administrative Procedural Manual. These costs may be less than the total development cost.
2. Use Tenant Surveys to calculate the incomes of your tenant households and determine what percent of your units are income-eligible, meet HOME rent limitations, and will be designated as "HOME units."
3. Multiply lines 1 and 2.
4. Total number of designated HOME units determined by tenant household incomes and compliance with HOME rent limitations.
5. \$14,000 is the maximum per unit costs allowed by the HOME Rental Rehab Program, except in special circumstances.
6. The lesser of lines 3 and 5 will give you the amount of HOME eligible costs that may be paid with HOME funds.
7. Subtract line 6 from line 1 to determine the amount of gap financing required.



### Comparable Unit Method Example A

1. Determine the HOME-eligible costs of the project	\$320,000
2. Determine the percentage of units that will be designated "HOME units"	80%
3. Multiply lines 1 and 2	\$256,000
4. Number of designated "HOME units"	20
5. Multiply Line 4 by \$14,000 per unit limit	\$280,000
6. Maximum HOME assistance. Take the lesser of Lines 3 and 5	\$256,000

In Example A, there are 25 units and 20 of them are HOME eligible based on tenant household income and rent. Based on HOME eligible costs and the percentage of units that are HOME eligible, the project could apply for \$256,000. Because this is lower than the \$14,000 per unit limit, the project may be awarded the full \$256,000.

Please note that in order to use the Comparable Unit Method, the HOME-assisted units must be spread evenly by bedroom type. The 25 units in our example are distributed as follows: 13 efficiency units; 12 one-bedroom units. In this case, 13 efficiency units times 80% (portion of HOME eligible costs that will be covered by HOME funds) equals 10.4. At least 10 efficiency units need to be HOME eligible by tenant household income and rent.

12 one-bedroom units times 80% equals 9.6. At least 10 one-bedroom units need to be HOME eligible by tenant household income and rent.

### Comparable Unit Method Example B

1. Determine the HOME-eligible costs of the project	\$400,000
2. Determine the percentage of units that will be designated "HOME units"	80%
3. Multiply lines 1 and 2	\$320,000
4. Number of designated "HOME units"	20
5. Multiply Line 4 by \$14,000 per unit limit	\$280,000
6. Maximum HOME assistance. Take the lesser of Lines 3 and 5	\$280,000

In Example B, there are 25 units and 20 of them are HOME eligible based on tenant household income and rents. Based on HOME eligible costs and the percentage of units that are HOME eligible, the project could apply for \$320,000. However, most projects are limited to a \$14,000 per unit allocation- in which case total funding would equal \$280,000.

In Example B, the 25 units are distributed as follows: 13 efficiency units; 12 one-bedroom units. In this case, because \$280,000, or 70% of the eligible HOME costs, was awarded, only 70% of the units need to be considered HOME assisted. They will be distributed as follows:

13 efficiency units times 70% (portion of HOME eligible costs that will be covered by HOME funds) equals 9.1. At least 9 efficiency units need to be HOME eligible by tenant household income and rent.

12 one-bedroom units times 70% equals 8.4. At least 8 one-bedroom units need to be HOME eligible by tenant household income and rent.

### ***Non-Comparable Unit Method of Cost Allocation***

A	B	C	D	E	F	G
Unit I.D.	Unit Area	% of Total Unit Area (C/H)	Unit Rehab Costs	Unit share of common costs (Common costs x C)	Total unit costs (Sum D + E)	HOME Unit? Y or N
Totals	H (Sum of B)					

#### **Instructions for Non Comparable Unit Method worksheet**

1. Identify each unit in the project.
2. Determine the area of each unit.
3. Determine the total area of living units (cell H), excluding common areas.
4. Determine each unit's share of the value in cell H. (Unit area divided by total of unit areas; i.e., C/H)
5. Determine the HOME-eligible cost of rehabilitation for each unit from bids. Include only the costs of rehabilitation that will occur within the walls of each unit.
6. Determine the HOME-eligible rehabilitation costs of common areas and multiply it by C for each unit. Place the answer in column E.
7. Determine the total cost for each unit by adding across columns D and E and place the answer in column F.
8. Determine which units will be HOME units. HOME units must be fixed.
9. Determine total HOME costs. Add the Column F numbers of HOME-designated units.
10. Determine the average per unit HOME costs by dividing the sum from 9 by the number of HOME units. The answer must be less than \$14,000, or no more than \$40,000 if preserving federally-assisted housing.

### **Properties Receiving Project-based Rental Assistance**

#### ***Rent and Income Limits***

If the HOME-assisted unit receives Federal or State project-based rental subsidy and the unit is occupied by a very low-income (50% AMI) household who pays as a contribution towards rent not more than 30% of the adjusted gross income, rents may exceed the HOME rent limits.

#### ***Rent Increases***

If the HOME-assisted unit receives Federal or State project-based rental subsidy and the very low-income (50% AMI) household pay as a contribution toward rent not more than 30% of the household adjusted income and no displacement occurs as defined by the URA regulations, then the rents may increase within the limits imposed by the rental-assistance provider.

#### ***Income Temporary Non-Compliance***

If the income of a tenant occupying a HOME-assisted unit, increases above 50% AMI, the property owner must rent the next available unit (for "floating" unit developments) or HOME-assisted unit (for "fixed" unit developments) to a very low-income (50% AMI) household, or, if the tenant household is at or below 80%AMI, reduce the rent to the HOME rent limit.

## Chapter 5 – Forgivable Loan

Developments obtaining less than \$100,000 in HOME assistance will receive a 0% loan that will be forgiven after a successful Effective Period. However, *repayment is required upon the sale or transfer of the property, or an occurrence of an event of default as outlined in the HOME mortgage, if either occur prior to the successful completion of the Effective Period.* Borrowers must provide a minimum of 25% of the HOME-eligible costs. Forgivable loans are end loans; therefore, you will be required to obtain construction financing or provide evidence of available funds during the construction period in the amount of the total development cost (TDC). Properties will be monitored for compliance with affordability and property standards during the Effective Period.

The local administrator may choose to require a higher owner contribution. If not all units are HOME-assisted, but all units are comparable, then the amount of HOME assistance can be prorated based on the percentage of units that are HOME-assisted. Otherwise costs must be determined on a per unit basis.

You must provide one of the following documents to demonstrate the source, terms and conditions of the 25% match:

- A commitment letter from a lending institution stating that private funds will be available to the property owner contingent upon obtaining a Minnesota Housing loan commitment.
- A commitment letter from a governmental body providing other public funds such as Community Development Block Grant (CDBG) funds, Minnesota Housing Rental Rehabilitation Loan Program funds, etc.
- For U.S. Rural Development, Section 8 and HUD 236 developments, a letter from the local Rural Development office and/or HUD stating the property owner may use reserve funds for the 25% match, if applicable.

### Preparation of Loan Packet

The following items are collected by the property owner, with assistance from the local administrator. These items must be submitted and approved by Minnesota Housing prior to issuance of loan commitment:

- HOME Rental Rehabilitation Application (HOME Form 1)
- Comparable or Non-comparable Unit Calculation of HOME Assistance
- Original photographs of interior and exterior elevations and proposed work scope items
- Current owners & encumbrance report (O & E Report)
- Ownership documentation. *Refer to Eligibility and Documentation section of this Owner's Manual*
- Junior lien approval from all senior lien holders
- Subordination consent letter from all senior lien holders
- Statement establishing the source and terms of property owner's matching funds
- Property insurance binder or certificate, **including building insurance and \$1,000,000.00 in general liability. Flood insurance is required if the property is in a FEMA-designated floodplain.**
- Evidence of construction financing
- Historical operating reports from the past two years
- Applicable utility allowance

### Construction Documentation

- Energy audit performed by an energy auditor
- Property Inspection Report(s) and local building standards report, if required in the locality of the development, or if desired by the property owner

- List of Improvements/Sworn Construction Statement including Soft Cost Worksheet (HOME Form 9)
- Final scope of work/bid specifications
- Bids for selected and non-selected single prime general contractor
- License of selected single prime general contractor
- Evidence from the federal Excluded Parties List System (EPLS) that single prime general contractor and any subcontractors receiving more than \$20,000 are not disbarred from receiving federal funding.

## **HUD/Rural Development**

- Audited financial statements for each of the last 2 years
- Rental Assistance Agreement/HAP Contract, if applicable
- Reserves approval, if applicable

## **Tenant Data**

- Signed Data Practices form for all HOME-assisted households
- Signed Tenant Survey for all HOME-assisted households
- Initial Tenant Occupancy Form (listing all units)
- Previous six-months rent roll
- Current lease(s) for all HOME-assisted units
- Signed Lease Addendum for all HOME-assisted units
- Relocation documentation, if applicable

## **Equal Opportunity**

- Contract Compliance Activity Report
- Signed Contractor Compliance form for all single prime general contractors and subcontractors providing bids
- Affirmative Fair Housing Marketing Plan (AFHMP) for developments with 5 or more units

## **Environmental Review**

- Statutory Checklist with supporting documentation
- Environmental Assessment Checklist, if applicable

## **Subsidy Layering Review (developments receiving other government assistance)**

- Cash on Cash Return evaluation
- Sources and Uses of Funds statement

## **Lead-Based Paint (built prior to 1978)**

- Lead-based paint Summary Sheet
- Lead-based paint Risk Assessment
- Lead-based paint abatement supervisor and/or worker certifications, if applicable

## **Loan Commitment**

Upon approval of the loan packet, Minnesota Housing will issue a Loan Commitment. The local administrator will facilitate execution of the loan commitment with the property owner. Rehabilitation may begin only after the loan commitment is fully executed.

## **Disbursement of Funds**

No draws will be permitted prior to development completion and Minnesota Housing approval of completion documentation; therefore, borrowers will be required to provide evidence of construction financing in the amount of the total development cost (TDC).

## **Completion Documentation**

At development completion, the local administrator is responsible for compiling and reviewing all required completion documentation for submittal to Minnesota Housing for final review and disbursement of funds. The local administrator will submit the following for review and approval by Minnesota Housing staff:

- Final List of Improvements/Sworn Construction Statement including Soft Cost Worksheet (HOME Form 9)
- Pictures of completed work
- Invoices for soft costs
- Payoff letters from interim construction lenders
- Lien waivers
- Updated O & E Title Report
- Contractor Compliance form for all contractors/sub-contractors, if not previously provided
- **Certification of completion of energy audit items with a pay back of seven years or less**
- Final Property Inspection Report(s) demonstrating compliance with applicable state and local codes, rehabilitation standards, ordinances, HQS and zoning ordinances
- Final Tenant Occupancy Form (listing all units)
- Explanation of change in tenancy, if applicable
- Signed Tenant Survey for new tenants
- Signed Data Practices form for new tenants
- Signed Lease Addendum for new tenants
- Signed "Notice to Prospective Tenants" for new tenants
- Rental Completion Report (reporting HOME-assisted units only)
- Lead-based paint clearance, if applicable
- Updated LBP-1 with lead-safe work practices certification, if applicable
- Updated Comparable or Non Comparable Unit Calculation of HOME assistance.

## **Loan Closing**

Upon Minnesota Housing approval of completion documentation, Minnesota Housing will issue the following loan documents:

- Forgivable Loan Repayment Agreement and Mortgage
- Declaration of Covenants, Conditions and Restrictions – HOME
- Declaration of Covenants and Restrictions – HAP/RD (if applicable)

The local administrator will facilitate the loan closing with the property owner and have the loan documents executed and notarized. The local administrator must have the documents recorded at the Office of the County Recorder or Registrar of Titles, and return the fully executed and recorded loan documents to Minnesota Housing.

## Loan Servicing

Repayment will be required upon sale or transfer of the property, or in the event of default; therefore, loan servicing requests will only be considered for refinance of the existing first mortgage or partial release of mortgage. Loan servicing requests are subject to the terms and conditions of the program as set forth in this Owner's Manual and the loan documents. General considerations are as follows:

- Requests for loan servicing must be submitted at least 30 days prior to the expected closing date. A \$200 review/processing fee, made payable to Minnesota Housing will be required for each request.
- Minnesota Housing will not consider loan servicing within the first year after development completion. Exceptions to this may be the death of the property owner, or an incorrect legal description encumbering non-improved property.
- The loan-servicing request must financially strengthen the development.

## Partial Release of Mortgage

This document discharges a part of the property from the conditions of the mortgage. Minnesota Housing's partial release of mortgage policy is as follows:

- **Sale of Land or Easement.** This action typically involves property that was intended to be included in the legal description, but now the property owner wants to sell a portion or grant an easement on the property. If, **in Minnesota Housing's sole opinion**, the sale of part of the property will make its remaining value significantly less than the Minnesota Housing loan, the property owner may be required to repay a portion of the Minnesota Housing loan from the proceeds from the sale.
- **Accidental Encumbrances.** Occasionally the legal description will include neighboring properties. Provided Minnesota Housing never intended to take this other property as security for the loan, **in Minnesota Housing's sole opinion**, Minnesota Housing will release the land.

To process a partial release of mortgage, the following documentation is necessary:

- A written request stating the reason for the release of property.
- **The market value of the property prior to the release and the market value of the property that will remain subject to Minnesota Housing's mortgage (i.e., recent property tax statement, appraisal, or an analysis from a local realtor).**
- A list of encumbrances and outstanding balances on the property that will remain subject Minnesota Housing's mortgage.
- The legal description of the property to be released.
- A plat map, survey or sketch illustrating the property to be released, and what property will remain subject to Minnesota Housing's mortgage and the location of the rehabilitated structure.
- A copy of the purchase agreement or easement, and the details of the sale including the amount of funds being conveyed.

## Subordination of Mortgage

This document subordinates Minnesota Housing's mortgage to a new mortgage. This means that Minnesota Housing's mortgage will be of a lower priority against the property.

Minnesota Housing will not subordinate to new financing that provides cash to the borrower unless the proceeds will be used to improve/repair the property. The improvement/repair funds must be held by either the Lender or a title company for disbursement, with any excess funds being applied directly to the principal of the new loan. The new financing cannot be an open-ended line of credit.

To process a subordination of mortgage, the following documentation is necessary:

- A written request for the subordination of mortgage
- A current appraisal of the estimated value of the property subject to Minnesota Housing's mortgage
- A letter from the HOME Program local administrator certifying that the property complies with all HOME Program requirements
- A copy of the good faith settlement statement
- A copy of the commitment for title insurance policy showing all liens and encumbrances and their priority and outstanding balances on the property
- The outstanding principal balance of the current loan(s), monthly payment(s), interest rate and remaining term
- A specific commitment letter from the lender, which, at a minimum, specifies terms of the new mortgage (i.e., principal amount, interest rate, term, payment schedule, etc.)
- A cash-flow analysis of the property, ensuring remaining financial feasibility

**The decision of whether or not to partially release the mortgage or subordinate is at the sole discretion of Minnesota Housing. In the event that Minnesota Housing allows the subordination of the Loan Repayment Agreement and Mortgage, the Declaration of Covenants, Conditions and Restrictions–HOME shall remain in a priority position.**

## Chapter 6 – Deferred Loan

Developments obtaining \$100,000 or greater in HOME assistance will receive a 0% deferred loan. *Repayment is required upon the earlier of; the sale or transfer of the property, the payment in full of any permanent senior mortgage loan on the property, the maturity date of any permanent senior mortgage loan on the property, or an occurrence of an event of default as outlined in the HOME mortgage.* Borrowers may obtain financing for 100% of HOME-eligible costs as long as the HOME expenditures do not exceed the established maximum allowance per HOME-assisted unit. Borrowers must have existing financing on the property with a mortgage maturity date that extends beyond the Effective Period. Properties will be monitored for compliance with affordability and property standards during the Effective Period.

### Preparation of Loan Packet

The following items are collected by the property owner, with assistance from the local administrator. These items must be submitted and approved by Minnesota Housing prior to loan commitment:

- HOME Rental Rehabilitation Application (HOME Form 1)
- Comparable or Non-comparable Unit Calculation of HOME Assistance
- Original photographs of interior and exterior elevations and proposed work scope items
- Commitment for a title insurance policy w/mechanics lien coverage
- Copy of all senior mortgages on the property
- Ownership documentation. *Refer to Eligibility and Documentation section of this Owner's Manual*
- Junior lien approval from all senior lien holders
- Subordination consent letter from all senior lien holders
- Property insurance binder or certificate, including building insurance and \$1,000,000 in general liability. Flood insurance is required if property is in a FEMA-designated floodplain.
- Evidence of construction financing, if applicable
- Historical operating reports dating back two years.
- Applicable utility allowance

### Construction Documentation

- Energy audit performed by an energy auditor.
- Property Inspection Report(s) and local building standards report, if required in the locality of the development, or if desired by the property owner
- Bids for selected and non-selected single prime general contractor
- Final scope of work/bid specifications drafted by a licensed architect
- List of Improvements/Sworn Construction Statement including Soft Cost Worksheet (HOME Form 9)
- AIA Architect Agreement between property owner and architect.
- Architect Certificate of Insurance.
- AIA Construction Contract between property owner and selected single prime general contractor.
- License of selected single prime general contractor
- Evidence of contractor's insurance (i.e., general liability, workers compensation, etc.) for developments obtaining a Minnesota Housing construction loan.
- Evidence of contractor surety (i.e., payment and performance bonds) for developments obtaining a Minnesota Housing construction loan in the amount of \$300,000 or greater.
- Evidence from the federal Excluded Parties List System (EPLS) that the single prime general contractor and any subcontractors for amounts greater than \$20,000 are not disbarred from receiving federal funding.



## **HUD/Rural Development**

- Audited financial statements for each of the last 2 years
- Rental Assistance Agreement/HAP Contract, if applicable
- Reserves approval, if applicable

## **Tenant Data**

- Signed Data Practices form for all HOME-assisted households
- Signed Tenant Survey for all HOME-assisted households
- Initial Tenant Occupancy Form (listing all units)
- Previous six-months rent roll
- Current lease(s) for all HOME-assisted units
- Signed Lease Addendums for all HOME-assisted units
- Relocation documentation, if applicable

## **Equal Opportunity**

- Contract Compliance Activity Report
- Signed Contractor Compliance form for all single prime general contractors and subcontractors providing bids
- Affirmative Fair Housing Marketing Plan (AFHMP)
- Section 3 documentation, if applicable

## **Environmental Review**

- Statutory Checklist with supporting documentation
- Environmental Assessment Checklist, if applicable
- Phase I Environmental Site Assessment per ASTM E 1527 including lead testing per 24 CFR 35.120 (if built pre 1978) and a asbestos survey with remedies, and retain a reliance letter from the assessor (developments obtaining \$300,000 or greater in Minnesota Housing funding)

## **Subsidy Layering Review (development receiving other government assistance)**

- Cash on Cash Return evaluation
- Sources and Uses of Funds statement

## **Lead-Based Paint (built prior to 1978)**

- Lead-based paint Summary Sheet
- Lead-based paint risk assessment
- Lead-based paint abatement supervisor and/or worker certifications, if applicable

## **Davis-Bacon/Labor Standards (12 or more HOME-assisted units)**

- Evidence of contractor/subcontractor debarment search
- Notice of contract status

## **Loan commitment**

Upon approval of the loan packet, Minnesota Housing will issue loan documents as follows:

### End Loan

- Deferred Loan Commitment

### Construction Loan

- Deferred Loan Commitment
- Building Loan Agreement
- Deferred Loan Repayment Agreement and Combination Mortgage, Security Agreement
- Declaration of Covenants, Conditions and Restrictions – HOME
- Declaration of Covenants and Restrictions – HAP/RD (if applicable)
- Subordination Agreement to Minnesota Housing Declaration of Covenants, Conditions and Restrictions - HOME

The local administrator will facilitate the loan closing with the property owner and Title Company and will have the loan documents executed and notarized. The loan documents must be recorded at the Office of the County Recorder or Registrar of Titles, and returned to Minnesota Housing within 90 days. Rehabilitation may begin only after the loan documents are fully executed.

### **Disbursement of Funds**

#### End Loan

- No draws will be permitted prior to development completion and Minnesota Housing approval of completion documentation; therefore, property owners will be required to obtain construction financing or provide evidence of funds available during the construction period in the amount of the total development cost (TDC).

#### Construction Loan

- Minnesota Housing will permit one draw per month to be processed through a title company. A 10% retainer shall be withheld per construction draw until 50% of the work is complete by dollar volume. At that time, the property owner, with Minnesota Housing approval, may elect not to withhold any further retainer, resulting in a 5% overall retainer. The retainer shall apply to hard costs (i.e., completed work, materials, equipment, etc.)

### **Completion Documentation**

At development completion, the local administrator is responsible for compiling and reviewing all required completion documentation for submittal to Minnesota Housing for final review and final disbursement of funds. The local administrator must submit the following for review by Minnesota Housing staff:

- Final List of Improvements/Sworn Construction Statement including Soft Cost Worksheet (HOME Form 9)
- Pictures of completed work
- Updated commitment for title insurance policy
- Payoff letters from interim construction lenders
- Invoices for soft costs
- Contractor Compliance form for all contractors/sub-contractors (if not previously provided)
- **Certification of completion of energy audit items with pay back of seven years or less**
- Final Property Inspection Report(s) demonstrating compliance with applicable state and local codes, rehabilitation standards, ordinances, HQS and zoning ordinances
- Final Tenant Occupancy Form (listing all units)
- Explanation of change in tenancy, if applicable
- Signed Tenant Survey for new tenants
- Signed Data Practices form for new tenants
- Signed Lease Addendum for new tenants
- Signed "Notice to Prospective Tenant" for new tenants
- Rental Completion Report (reporting HOME-assisted units only)
- Section 3 Employment and Training Report, if applicable
- Final Davis-Bacon documentation, if applicable
- Lead-based paint clearance, if applicable

- Updated LBP-1 with lead-safe work practices certification
- Updated Comparable or Non Comparable Unit Calculation of HOME assistance

## **Loan closing**

Upon Minnesota Housing approval of completion documentation, the Minnesota Housing will issue the following loan documents:

### End Loan

- Deferred Loan Repayment Agreement and Combination Mortgage, Security Agreement
- Declaration of Covenants, Conditions and Restrictions – HOME
- Declaration of Covenants and Restrictions – HAP/RD (if applicable)

### Construction Loan

- Declaration as to Effective Period
- Amendment to Deferred Loan Repayment Agreement and Combination Mortgage, Security Agreement (if applicable)

The local administrator will facilitate the loan closing with the property owner and Title Company and have the loan documents executed and notarized. The loan documents must be recorded at the Office of the County Recorder or Registrar of Titles, and returned to Minnesota Housing.

## **Loan Servicing**

Repayment will be required upon the earlier of: the sale or transfer of the Mortgaged Property, the payment in full of any permanent senior mortgage loan on the Mortgaged Property, the maturity of the permanent senior mortgage loan on the Property, or an occurrence of an Event of Default as outlined in the HOME mortgage; therefore, loan servicing requests will only be considered for refinance of the existing first mortgage or partial release of mortgage. Loan servicing requests are subject to the terms and conditions of the program as set forth in this Owner's Manual and the loan documents. General considerations are as follows:

- Requests for loan servicing must be submitted at least 30 days prior to the expected closing date. A \$200 review/processing fee, made payable to Minnesota Housing will be required for each request.
- Minnesota Housing will not consider loan servicing within the first year after development completion. Exceptions to this may be the death of the property owner, or an incorrect legal description encumbering non-improved property.
- The loan-servicing request must financially strengthen the development.

## **Partial Release of Mortgage**

This document discharges a part of the property from the conditions of the mortgage. Minnesota Housing's partial release of mortgage policy is as follows:

### **Sale of Land or Easement**

- This action typically involves property that is intended to be included in the legal description, but now the property owner wants to sell a portion or grant an easement on the property. If the sale of part of the property will make its remaining value significantly less than the Minnesota Housing loan, in Minnesota Housing's sole opinion, the property owner may be required to repay a portion of the Minnesota Housing loan from the proceeds of the sale.

### **Accidental Encumbrances**

- Occasionally the legal description will include neighboring properties. Provided Minnesota Housing never intended to take this other property as security for the loan, in Minnesota Housing's sole opinion, Minnesota Housing will release the land.

To process a partial release of mortgage, the following documentation is necessary:

- A written request stating the reason for the release of property
- The market value of the property prior to release and the market value of the property that will remain subject to Minnesota Housing's mortgage (i.e., recent property tax statement, appraisal, or an analysis from a local realtor)
- A list of encumbrances and outstanding balances on the property that will remain subject to Minnesota Housing's mortgage
- The legal description of the property to be released
- A plat map, survey or sketch illustrating the property to be released, and what property will remain subject to Minnesota Housing's mortgage and the location of the rehabilitated structure
- A copy of the purchase agreement or easement, and the details of the sale including the amount of funds being conveyed

### **Subordination of Mortgage**

This document subordinates Minnesota Housing's mortgage to a new mortgage. This means that Minnesota Housing's mortgage will be of a lower priority against the property.

#### **No Cash Out**

Minnesota Housing will subordinate to new financing if there is no cash out of the transaction.

#### **Cash Out Transaction**

If the property owner is receiving proceeds from the financial transaction; the proceeds must be used to improve/repair the property. The improvement/repair funds must be held by either the lender or a title company for disbursement, with any excess funds being applied directly to the principal of the new loan. The new financing cannot be an open-ended line of credit.

Minnesota Housing will not subordinate to new financing that provides cash to the borrower unless the proceeds will be used to improve/repair the property. The improvement/repair funds must be held by either the Lender or a title company for disbursement, with any excess funds applied directly to the principal of the new loan. The new financing cannot be an open-ended line of credit.

To process a subordination of mortgage, the following documentation is necessary:

- A written request for the subordination of mortgage
- A current appraisal of the estimated value of the property subject to Minnesota Housing's mortgage
- A letter from the HOME Program local administrator certifying that the property complies with all HOME Program requirements
- A copy of the Good Faith Settlement Statement
- A copy of the commitment for title insurance policy showing all liens and encumbrances and their priority and outstanding balances on the property
- The outstanding principal balance of the current loan(s), monthly payment(s), interest rate and remaining term
- A specific commitment letter from the lender, which, at a minimum, specifies terms of the new mortgage (i.e., principal amount, interest rate, term, payment schedule, etc.)
- A cash-flow analysis of the property, ensuring remaining financial feasibility

**The decision of whether or not to partially release the mortgage or subordinate is at the sole discretion of Minnesota Housing. In the event that Minnesota Housing allows the subordination of the Loan Repayment Agreement and Mortgage, the Declaration of Covenants, Conditions and Restrictions–HOME shall remain in a priority position**

## Chapter 7 – Design and Construction Standards

This section describes minimum design and construction standards required for the HOME Program. Each development must be in compliance with applicable state and local building codes, standards and regulations, HQS, and energy efficiency standards. In addition, developments must comply with Minnesota Housing design and construction requirements described in this section.

If uncertain how these design and construction standards apply to a specific development, contact your local administrator.

As a condition of receipt of HOME assistance, the property owner accepts all responsibility for verifying and complying with these codes, standards and regulations during construction and during the Effective Period. Failure to comply may result in forfeiture of undisbursed funds, repayment penalties, or both. The property owner is encouraged to seek professional assistance in the application and interpretation of these codes, standards and regulations. Sources of assistance are the local administrator, local building inspector; local architects and engineers; or some highly qualified contractors.

### Model Codes, Ordinances, General Construction:

1. International Building Code, 2006 Edition
2. International Residential Code for 1- and 2- family dwellings, 2006 Edition
3. Minnesota State Building Code, 2007 Edition
4. Minnesota Statute 326B.805 regarding licensure of Building and Remodeling Contractors
5. HUD Housing Quality Standards, 24 CFR 982.401 (only where there are no local housing quality codes or standards)
6. Minnesota Plumbing Code, Minnesota Rules Chapter 4715
7. National Electric Code, Minnesota Statutes Chapter 1315, 2008 Edition
8. Minnesota Energy Code, Minnesota Rules Chapter 7670
9. Any applicable local, city, county, municipal codes, ordinances, zoning regulations, or housing maintenance standards

### Lead-Based Paint and other Lead Hazard Requirements and Procedures:

1. Federal Law 42 U.S.C. 4821 et seq.; "Lead-Based Paint Poisoning Prevention Act"
2. Federal Regulation 24 CFR, Part 35: "Requirements For Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance"
3. Federal Regulation 24 CFR 982.401(j) applies with respect to Lead-Based Paint regardless of whether local housing quality codes or standards exist
4. Federal Regulation 40 CFR Part 745 EPA's "Lead; Identification of Dangerous Levels of Lead"
5. Federal Regulation 29 CFR Part 1926 OSHA's "Safety & Health Regulations For Construction"
6. Minnesota Statute 144.9501 to 144.9512, "Lead Poisoning Prevention Act"
7. Minnesota Rules, Chapter 4761, "Residential Lead Abatement"
8. Minnesota Rule, Chapter 4760, "Pollution Control Agency Lead Abatement in Soil"
9. Minnesota Rule, 7025.0010-7025.0080 "Abrasive Blasting of Lead Paint from Residential, Child Care, and School Buildings"

### Fair Housing and Handicapped Accessibility Regulations and Statutes:

1. Federal Law, 29 U.S.C. 794: "Section 504 of The Rehabilitation Act of 1973"
2. Federal Regulation 42 U.S.C. 3601, "Fair Housing Act, Title VIII of The Civil Rights Act of 1968"

3. Federal Regulation 24 CFR Part 8: "Non-Discrimination Based on Handicap in Federally Assisted Programs and Activities; Final Rule; June 2, 1998"
4. Covered Multifamily buildings defined in 24 CFR 100.201 must meet the design and construction standards at 24 CFR 100.205
5. Uniform Federal Accessibility Standards (Fed. Std. 795, April 1, 1988)
6. American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped people (ANSI 177.1, 1992)
7. Minnesota Accessibility Code, **Minnesota Rules Chapter 1341**, 2007

As a condition of application, property inspections are required at development completion to ensure the property complies with applicable state and local codes, rehabilitation standards, ordinances, HQS, zoning ordinances, and lead based paint standards under 24 CFR Part 35. In addition, property inspections are required through the Effective Period to insure the property maintains continual compliance.

When a local code or ordinance requires building permits, typically the local building inspector will be involved. Minnesota Housing encourages property owners to engage the local building inspector in a code review or inspection early in the development planning and budgeting phases, to make sure that all code deficiencies are identified, budgeted, and resolved.

Where different codes or standards govern the same condition, conformance must be to the highest or most restrictive standard. For renovation and rehabilitation developments, some model codes allow for pre-existent deficiencies to remain in place. Minnesota Housing relies on the opinion of the local building official to determine which deficiencies may remain or must be corrected. However, on review of the property, Minnesota Housing reserves the right to selectively mandate correction of certain code deficiencies that may be otherwise acceptable to the local building official.

The final disbursement will be withheld until all code deficiencies cited for correction are complete, lead based paint hazards are corrected, and the local building inspector has issued an Occupancy Certificate.

## **Housing Quality Standards**

The HQS consist of performance requirements and acceptability criteria or HUD approved variations in the acceptability criteria.

The following section states performance and acceptability criteria for these key aspects of housing quality:

- Sanitary facilities;
- Food preparation and refuse disposal;
- Space and security;
- Thermal environment;
- Illumination and electricity;
- Structure and materials;
- Interior air quality;
- Water supply;
- Lead-based paint;
- Access;
- Site and neighborhood;
- Sanitary condition;
- Smoke detectors

All HOME Program housing must meet the HQS performance requirements both at commencement of assisted occupancy, and throughout the assisted tenancy.

In addition to meeting HQS performance requirements, the housing must meet the acceptability criteria stated in this section, unless variations are approved by HUD.

HUD may approve acceptability criteria variations for the following purposes:

- Variations which apply standards in local housing codes or other codes adopted by the PHA; or
- Variations because of local climatic or geographic conditions.

Acceptability criteria variations may only be approved by HUD if such variations either:

- Meet or exceed the performance requirements; or
- Significantly expand affordable housing opportunities for families assisted under the HOME Program.

HUD will not approve any acceptability criteria variation if HUD believes that such variation is likely to adversely affect the health or safety of participant families, or severely restrict housing choice.

### ***Sanitary facilities***

- (1) Performance requirements. The dwelling unit must include sanitary facilities located in the unit. The sanitary facilities must be in proper operating condition, and adequate for personal cleanliness and the disposal of human waste. The sanitary facilities must be usable in privacy.
- (2) Acceptability criteria. (i) The bathroom must be located in a separate private room and have a flush toilet in proper operating condition. (ii) The dwelling unit must have a fixed basin in proper operating condition, with a sink trap and hot and cold running water. (iii) The dwelling unit must have a shower or a tub in proper operating condition with hot and cold running water. (iv) The facilities must utilize an approvable public or private disposal system (including a locally approvable septic system).

### ***Food preparation and refuse disposal***

- (1) Performance requirement. (i) The dwelling unit must have suitable space and equipment to store, prepare, and serve foods in a sanitary manner. (ii) There must be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).
- (2) Acceptability criteria. (i) The dwelling unit must have an oven, and a stove or range, and a refrigerator of appropriate size for the family. All of the equipment must be in proper operating condition. The equipment may be supplied by either the owner or the family. A microwave oven may be substituted for a tenant-supplied oven and stove or range. A microwave oven may be substituted for an owner-supplied oven and stove or range if the tenant agrees and microwave ovens are furnished instead of an oven and stove or range to both subsidized and unsubsidized tenants in the building or premises. (ii) The dwelling unit must have a kitchen sink in proper operating condition, with a sink trap and hot and cold running water. The sink must drain into an approvable public or private system. (iii) The dwelling unit must have space for the storage, preparation, and serving of food. (iv) There must be facilities and services for the sanitary disposal of food waste and refuse, including temporary storage facilities where necessary (e.g., garbage cans).

### ***Space and security***

- (1) Performance requirement. The dwelling unit must provide adequate space and security for the family.
- (2) Acceptability criteria. (i) At a minimum, the dwelling unit must have a living room, a kitchen area, and a bathroom. (ii) The dwelling unit must have at least one bedroom or living/sleeping room for each two persons. Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room. (iii) Dwelling unit windows that are accessible from the outside, such as basement, first



floor, and fire escape windows, must be lockable (such as window units with sash pins or sash locks, and combination windows with latches). Windows that are nailed shut are acceptable only if these windows are not needed for ventilation or as an alternate exit in case of fire. (iv) The exterior doors of the dwelling unit must be lockable. Exterior doors are doors by which someone can enter or exit the dwelling unit.

### ***Thermal environment***

- (1) Performance requirement. The dwelling unit must have and be capable of maintaining a thermal environment healthy for the human body.
- (2) Acceptability criteria. (i) There must be a safe system for heating the dwelling unit (and a safe cooling system, where present). The system must be in proper operating condition. The system must be able to provide adequate heat (and cooling, if applicable), either directly or indirectly, to each room, in order to assure a healthy living environment appropriate to the climate. (ii) The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Electric heaters are acceptable.

### ***Illumination and electricity***

- (1) Performance requirement. Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. The electrical fixtures and wiring must ensure safety from fire.
- (2) Acceptability criteria. (i) There must be at least one window in the living room and in each sleeping room. (ii) The kitchen area and the bathroom must have a permanent ceiling or wall light fixture in proper operating condition. The kitchen area must also have at least one electrical outlet in proper operating condition. (iii) The living room and each bedroom must have at least two electrical outlets in proper operating condition. Permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets.

### ***Structure and materials***

- (1) Performance requirement. The dwelling unit must be structurally sound. The structure must not present any threat to the health and safety of the occupants and must protect the occupants from the environment.
- (2) Acceptability criteria. (i) Ceilings, walls, and floors must not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling, missing parts, or other serious damage. (ii) The roof must be structurally sound and weather tight. (iii) The exterior wall structure and surface must not have any serious defects such as serious leaning, buckling, sagging, large holes, or defects that may result in air infiltration or vermin infestation. (iv) The condition and equipment of interior and exterior stairs, halls, porches, walkways, etc., must not present a danger of tripping and falling. For example, broken or missing steps or loose boards are unacceptable. (v) Elevators must be working and safe.

### ***Interior air quality***

- (1) Performance requirement. The dwelling unit must be free of pollutants in the air at levels that threaten the health of the occupants.
- (2) Acceptability criteria. (i) The dwelling unit must be free from dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful pollutants. (ii) There must be adequate air circulation in the dwelling unit. (iii) Bathroom areas must have one operable window or other adequate exhaust ventilation. (iv) Any room used for sleeping must have at least one window. If the window is designed to open, the window must work.



**Water supply**

- (1) Performance requirement. The water supply must be free from contamination.
- (2) Acceptability criteria. The dwelling unit must be served by an approvable public or private water supply that is sanitary and free from contamination.

**Lead-based paint**

- (1) Performance requirement. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35.

**Access**

- (1) Performance requirement. The dwelling unit must be able to be used and maintained without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire (such as fire stairs or egress through windows).

**Site and Neighborhood**

- (1) Performance requirement. The site and neighborhood must be reasonably free from disturbing noises and reverberations and other dangers to the health, safety, and general welfare of the occupants.
- (2) Acceptability criteria. The site and neighborhood may not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks or steps; instability; flooding, poor drainage, septic tank back-ups or sewage hazards; mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

**Sanitary condition**

- (1) Performance requirement. The dwelling unit and its equipment must be in sanitary condition.
- (2) Acceptability criteria. The dwelling unit and its equipment must be free of vermin and rodent infestation.

**Smoke detectors**

- (1) Performance requirement. Each dwelling unit must have at least one battery-operated or hard-wired smoke detector, in proper operating condition, on each level of the dwelling unit, including basements but excepting crawl spaces and unfinished attics. Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any hearing-impaired person, - smoke detectors must have an alarm system, designed for hearing-impaired persons as specified in NFPA 74 (or successor standards). For units assisted prior to April 24, 1993, owners who installed battery-operated or hard-wired smoke detectors prior to April 24, 1993 in compliance with HUD's smoke detector requirements, including the regulations published on July 30, 1992, (57 FR 33846), will not be required subsequently to comply with any additional requirements mandated by NFPA 74 (i.e., the owner would not be required to install a smoke detector in a basement not used for living purposes, nor would the owner be required to change the location of the smoke detectors that have already been installed on the other floors of the unit.

## **Energy Conservation Codes and Standards**

HUD encourages the use of energy efficient products. HUD signed a memorandum of understanding (MOU) to promote the use of EPA approved energy efficient products.

An energy auditor shall perform an energy audit on the existing structure prior to finalizing the work scope. For objectivity, the energy auditor shall not be affiliated with any product or service contractor.

The purpose of the energy audit is to identify operation cost-saving opportunities through investment in energy efficiency. It shall examine retrofit of existing systems, as well as replacement strategies. Furthermore, the energy audit educates applicants on the economics of major rehabilitation expense items, such as window and door replacements. All measures considered shall be itemized with estimates of cost, annual energy savings and simple payback period.

In addition, the auditor shall examine your facility for compliance with Minnesota Rental Standards. Refer to the Rental Standard Compliance form. The auditor shall complete this form and attach it to their energy audit report.

The energy audit must evaluate, at a minimum, these building components:

- Quantities and costs of current energy consumption, by fuel type
- Roof, wall, floor, and foundation insulation
- Heat loss through windows and doors
- Caulking and weather stripping
- Vapor barriers, vapor transmission, vapor venting, moisture condensation
- Hot water heating systems and equipment
- Domestic water systems, fixtures, and metering
- Electrical service and metering
- Interior and exterior common area lighting

Energy conservation costs are HOME-eligible expenses. Where the energy audit identifies excessive energy consumption and alternatives for conservation, Minnesota Housing requires the applicant to take all measures that will provide a payback of seven years or less. Minnesota Housing also allows the applicant to take conservation measures that provide a seven to ten year payback, if reasonable and funds permit. Upon development completion, a post energy audit shall be conducted to verify all measures that provide a seven years or less payback are completed. It is recommended that the same auditor that performed the initial energy audit perform the post audit.

## **Additional Minnesota Housing Design and Construction Standards**

Minnesota Housing will require the property owner to hire a licensed architect and/or professional engineer if required by Minnesota Statutes, or, whenever HOME expenditures are \$100,000 or greater and the scope of work involves any of the following, unless otherwise waived by Minnesota Housing:

- Changes to load-bearing walls;
- Conversions
- Reconfigurations;
- Adaptive reuse of vacant buildings;
- Siding replacement;
- Roof replacement (>10,000 square feet of roofing area);
- Installation of an elevator

Other developments may be required to have technical assistance provided by an architect and/or engineer if determined necessary by Minnesota Housing.

Technical assistance includes design and construction administration services. All professional services shall be performed by professionals registered in the State of Minnesota in their respective fields and independent of the property owner and contractor engaged in the development.

Conversions, reconfigurations, and adaptive reuse of an existing building will require approval by a Minnesota Housing architect. Engage Minnesota Housing early in the process to facilitate architectural planning.

Developments obtaining greater than \$300,000 in HOME assistance, or developments obtaining less than \$100,000 in HOME assistance and having more than 12 dwelling units, may require work scope review and approval by a Minnesota Housing architect.

### ***Smoke Detectors***

In dwelling units, one battery operated smoke detector shall be installed in each sleeping room and one hardwired smoke detector shall be installed at a point centrally located in the corridor or area giving access to each separate sleeping area. When a dwelling unit has more than one story and/or a basement, a hardwired smoke detector shall be installed on each story and in the basement. In a dwelling unit where a story or basement is split into two or more levels, the hardwired smoke detector shall be installed on the upper level, except that when the lower level contains a sleeping area, a hardwired smoke detector shall be installed on each level. When sleeping rooms are on an upper level, the hardwired smoke detector shall be placed at the ceiling of the upper level in close proximity to the stairway.

In efficiency dwelling units, one hardwired smoke detector shall be located on the ceiling or wall of the main room. When the sleeping area within an efficiency dwelling unit is on an upper level, the hardwired smoke detector shall be placed at the ceiling of the upper level in close proximity to the stairway.

### ***Carbon Monoxide Detectors***

Effective August 1, all dwelling units must comply with the carbon monoxide (CO) law (Minnesota Statute 299F.50) requiring CO alarms in all single-family and multifamily apartment units. Every single-family dwelling and every multifamily dwelling unit shall be provided with an approved and fully operational **hardwired** carbon monoxide alarm within ten (10) feet of each room lawfully used for sleeping purposes.

### ***Ground Fault Circuit Interrupters (GFCI)***

Ground fault circuit interrupter protection shall be provided as per the National Electric Code at electrical receptacles located in bathroom, kitchen (except refrigerator outlet), and as required in basements and crawl spaces. All exterior receptacles shall also have GFCI protection.

### ***Square Footage***

Properties with dwelling units of less than 650 square feet are strongly discouraged. Contact Minnesota Housing prior to selecting developments with small dwelling units.

### ***Access***

Access to and from each dwelling unit must be without unauthorized use of other private properties or private spaces within the dwelling unit, and the building must provide an alternative means of egress in case of fire, which does not require use of other private property.

Each dwelling unit shall have a continuous and unobstructed means of egress to a public way such as a street, alley, or parcel for public use as defined by building code. Basements in dwelling units and every sleeping room shall have at least one operable window or door approved for emergency

escape or rescue which shall open directly into public street, public alley, yard or exit court as defined by building code.

Existing dwelling unit that currently have doors and windows for emergency escape that requires the use of other private property as an escape route to a public way must be approved by the Local Building Official, Fire Marshall and Minnesota Housing architect. If this escape route becomes obstructed, even through no fault of the property owner, the dwelling unit will be considered to be in non-compliance and the loan may be required to be repaid.

### ***Municipal Sewer and Water***

If municipal sewer and water is available in an adjacent street, easement, or right-of-way it must be provided to each dwelling unit.

### ***Kitchen Range Hood***

An exhaust hood above the kitchen range is required (ducted type preferred). An existing operable exhaust fan near the range is acceptable.

### ***Attic Ventilation***

Attic ventilation is required. Minnesota Housing recommends one square foot of venting for every 150 square feet of attic space.

## Chapter 8 – Lead Hazard Evaluation and Reduction

This section of the manual provides a detailed description of the lead hazard evaluation and lead hazard reduction requirements for rehabilitation using HOME assistance. This section does not describe requirements for Lead Hazard Evaluation and Reduction if a “lead order” has been issued by an assessing agency or if work is considered “regulated lead work”, as defined by the Minnesota Department of Health. While this description is comprehensive, local administrators and recipients should consult the regulation itself for the exact requirements.

### Background

When ingested, trace amounts of lead in dust, soil, water and lead-based paint can cause irreparable mental and physical disabilities. Pregnant women and children under seven years old are most susceptible to the risks that lead poses.

Years of leaded gasoline use have contaminated soil adjacent to major roadways. Soil next to buildings also can be contaminated when lead-based paint chips and dust remain on the soil after people scrape exterior lead-based paint.

Domestic potable water can become contaminated with lead particles by contact with lead-based solder used in domestic water pipes.

In 1978, the Federal government banned the use of lead in paint. Paint produced before 1950 typically had the highest lead content. It is, therefore, a reasonable assumption that housing constructed prior to 1978 has a high probability of having lead-based paint. Deteriorated lead-based paint (chalking, flaking, peeling, cracked or loose) poses the greatest hazard, as lead particles and dust can be released to the surrounding environment, and thus may be inhaled or eaten by a building’s occupants. Intact lead-based paint on chewable surfaces (window sills, doors, handrails, etc.) also poses a health risk, as young children and infants may ingest lead by chewing on these surfaces.

On September 15, 1999, the U.S. Department of Housing and Urban Development (HUD) issued regulations to protect residents and rehabilitation workers from lead-based paint hazards in housing that is financially assisted by the Federal government or being sold by the government. The regulation, “Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance,” appears within title 24 of the Code of Federal Regulations (CFR) as part 35 (24 CFR 35). It contains lead hazard evaluation and reduction requirements for properties receiving HUD funding.

Since the Minnesota Housing HOME Program is a federally funded program provided by HUD, the lead-based paint regulation applies to housing developments receiving HOME assistance. However, not all housing developments are covered by the HUD lead-based paint regulation.

#### Types of housing **not** covered by HUD lead-based paint regulation

- Housing built since January 1, 1978, when lead paint was banned for residential use
- Housing exclusively for the elderly or people with disabilities, unless a child under age 6 is expected to reside there
- Zero-bedroom dwellings, including efficiency apartments, single room occupancy housing, dormitories, or military barracks
- Property that has been found to be free of lead-based paint by a certified lead-based paint inspector
- Property where all lead-based paint has been removed
- Unoccupied housing that will remain vacant until it is demolished

- Non-residential property
- Any rehabilitation or housing improvement that does not disturb a painted surface.

## **Visual Assessment**

Every HOME-assisted dwelling unit shall have a Visual Assessment conducted by a person trained to identify deteriorated paint (e.g., HQS inspector, rehab specialist). The visual assessment is a surface-by-surface inspection for deteriorated paint consisting of a visual search for cracking, scaling, chalking, peeling, or chipping paint. This assessment will typically be performed, or arranged by, the local administrator.

The property owner is responsible for conducting visual assessments of all units at turn-over and annually. This must be done by a person trained in conducting visual assessments. To help owners develop that capacity, HUD offers an on-line visual assessment course at <http://www.hud.gov/offices/lead/training/index.cfm>. This course takes a short time to complete and provides a certificate documenting successful completion of the course. Visual assessments may be conducted either by the owner and/or their maintenance personnel, or a qualified person under contract with the owner to perform them. The local administrator would typically be qualified to contract with you to perform the annual and turnover visual assessments.

## **Evaluation and Lead Hazard Reduction**

There are three approaches to implementing lead hazard evaluation and reduction for rehabilitation developments. They are as follows:

- Do no harm
- Assess and control lead-based paint hazards
- Assess and abate lead-based paint hazards

The amount of Federal rehabilitation assistance provided dictates which strategy is to be used and the appropriate method of lead hazard evaluation and lead hazard reduction.

## **Safe Work Practices (24CFR35.1350)**

Regardless of what method of lead hazard reduction is used, safe work practices shall be followed. Safe work practices include occupant protection, worksite preparation, avoidance of prohibited practices and worksite clean up.

Safe work practices are not required when maintenance or hazard reduction is less than the following "De Minimis Levels":

- 20 square feet on exterior surfaces
- 2 square feet in any one interior room or space
- 10% of the total surface area on an interior or exterior component with small surface area. (e.g., windowsill, trim, baseboards, etc.)

## **Clearance (24CFR35.1340)**

The local administrator will arrange for a clearance examination after completion of rehabilitation. A clearance examination involves a visual assessment and dust testing to determine if the unit is safe for re-occupancy following a lead hazard reduction activity. Clearance following abatement shall be performed by persons certified to perform risk assessments or lead-based paint inspections. A certified clearance technician may perform clearance following activities, other than abatement. If the test results equal or exceed the designated standards at 24 CFR 35.132(b)(2), the dwelling unit, worksite, or common area fails the clearance examination.

## **Ongoing Maintenance (24CFR35.1355)**

All owners of properties built before 1978 that have not been verified as lead-free by a lead inspection, must institute ongoing maintenance of painted surfaces and safe work practices as part of regular building operations. This includes: A visual inspection of lead-based paint annually and at unit turn-over; repair of all unstable paint; and repair of encapsulated or enclosed areas that are damaged.

- Ongoing Maintenance Records—Property owners must keep ongoing maintenance records and records of relevant building operations for use during reevaluations.
- Property owners and their maintenance personnel must be trained in ongoing lead based paint maintenance, or must contract with a qualified individual or company to perform ongoing maintenance. Ongoing maintenance of lead-based paint must be conducted only by individuals who have completed a HUD-approved course on lead safe work practices, are licensed lead workers or lead supervisors, or are working under the direction of a licensed lead supervisor.

### ***Maintenance Requirements***

- Conduct Visual Assessment for deteriorating paint, bare soil and the failure of any lead hazard reduction measures at unit turnover and every 12 months.
- Address deteriorated paint through paint stabilization unless an evaluation states that there is no lead-based paint.
- Treat bare soil with interim controls unless an evaluation indicates that bare soil is not a soil-lead hazard.
- Repair any enclosures or encapsulations that show signs of failure.
- Perform other lead hazard reductions, as necessary.
- Provide a written notice in the language of the occupant, to the extent feasible, asking them to report deteriorated paint or failed encapsulation or enclosure. Include the contact name, address, and telephone number. HUD's Community Planning and Development recommends that the notice be provided every 12 months or at unit turnover.

### ***Safe Work Practices***

Safe work practices must be used with all subsequent maintenance or renovation work that disturbs paint that may be lead-based paint in excess of de minimis levels.

### ***Clearance***

Clearance must be conducted at the conclusion of repair, interim controls or abatement performed as a part of ongoing maintenance, unless painted surfaces do not exceed de minimis levels.

### ***Maintenance Exceptions***

Maintenance activities are not required if:

- A clearance report indicates that all building components with lead-based paint have been removed, and
- A current risk assessment indicates that no lead-contaminated soil or lead-contaminated dust is present.

### ***Maintenance Records***

The property owner must keep records of inspections, repairs and any other lead hazard evaluation activities for three years after the Effective Period has ended. Property owners should consider keeping the records indefinitely.



## Chapter 9 – Affirmative Action, Fair Housing, and Equal Economic Opportunity

### Affirmative Action

Minnesota Housing works affirmatively to ensure that all persons, regardless of race, color, creed, national origin, sex, religion, marital status, age, status with regard to receipt of public assistance, disability, sexual orientation, or familial status, will be treated fairly and equally in employment or program participation.

All programs financed or administered through Minnesota Housing will contain equal opportunity/affirmative action requirements in the contracts or procedural manuals, regardless of whether or not federal funding is involved.

### Equal Economic Opportunity

#### Contract Compliance

It is the policy of Minnesota Housing that minority and women-owned business enterprises (M/WBEs) have equal access to business opportunities resulting from Minnesota Housing-financed developments, and that the workforces on the development projects Minnesota Housing finances are demographically representative of the area in which the developments are located. When reviewing bid information, the Minnesota Housing will consider:

- The owner's and general contractor's certification that they comply with laws prohibiting discrimination in employment and that they hire affirmatively.
- The extent to which they solicit bids from M/WBEs; such solicitations must be documented.
- The demographic make-up of the contractor and subcontractor's workforces.

State and federal regulations direct that all affirmative steps be taken to assure that M/WBEs are used when possible. Outreach to minorities and women must be conducted and documented to the satisfaction of Minnesota Housing for contracts in excess of \$50,000.

Minnesota Housing strives to reach the following goals:

- 6% of all contract dollars let to women-owned and -controlled business enterprises.
- 11% of all contract dollars let to minority-owned and -controlled business enterprises in the Seven County Metropolitan Area, including the counties of: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington
- 4% of all contract dollars let to minority-owned and -controlled business enterprises in Southwest Minnesota, including the counties of: Big Stone, Blue Earth, Brown, Chippewa, Cottonwood, Faribault, Jackson, Lac qui Parle, Le Sueur, Lincoln, Lyon, Martin, Murray, Nicollet, Nobles, Pipestone, Redwood, Rock, Sibley, Swift, Waseca, Watonwan, Yellow Medicine
- 4% of all contract dollars let to minority-owned and -controlled business enterprises in Southeast Minnesota, including the counties of: Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Rice, Steele, Wabasha and Winona
- 3% of all contract dollars let to minority-owned and -controlled business enterprises in Central Minnesota, including the counties of: Benton, Chisago, Isanti, Kanabec, Kandiyohi, McLeod, Meeker, Mille Lacs, Pine, Renville, Sherburne, Sibley, Stearns, and Wright
- 6% of all contract dollars let to minority-owned and -controlled business enterprises for the counties of: Becker, Beltrami, Cass, Clay, Clearwater, Crow Wing, Douglas, Grant, Hubbard, Kittson, Mahnommen, Lake of the Woods, Marshall, Morrison, Norman, Otter Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stevens, Todd, Traverse, Wadena and Wilkin



- 5% of all contract dollars let to minority-owned and -controlled business enterprises in Northeast Minnesota, including the counties of: Aitkin, Carlton, Cook, Itasca, Koochiching, Lake, and Saint Louis

To demonstrate compliance with Minnesota Housing's affirmative contract compliance requirements, property owners must identify jobs bid by minority-owned, women-owned, and small or disadvantaged businesses, using the Minnesota Housing contract compliance activity report. The Minnesota Housing contract compliance form is a data collection tool to be included in bidding documents. All contractors and sub-contractors providing bids must complete this form. If not enough contractors (especially minority/women contractors) have been solicited; Minnesota Housing reserves the right to insist work is re-bid affirmatively.

### ***Equal Employment Opportunity***

Employers with federally assisted construction contracts must not be discriminatory in employment practices. Whenever contracts involving HOME assistance consist of more than \$10,000, an equal opportunity clause, as detailed by Executive Order 11246, must be incorporated into all construction contracts. Sixteen specific equal employment and affirmative action steps are prescribed by Executive Order 11246, to establish good faith efforts. (However, those examples are not the only options available to meet affirmative marketing and action requirements.)

Those sixteen steps consist of the following:

- 1) Maintain a work environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor's employees are assigned.
- 2) Establish and maintain a current list of minority and women recruitment sources, provide written notification to those about employment opportunities and maintain a record of responses.
- 3) Maintain a current file of the names, addresses, and phone numbers of each minority and woman off-the-street or referred applicant.
- 4) Provide immediate written notification to HUD when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has information that the union referral process has impeded the contractor's efforts to meet its obligations.
- 5) Develop on-the-site job training opportunities and/or participate in training programs for the area which expressly include minorities and women.
- 6) Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations.
- 7) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees with managerial and supervisory responsibilities.
- 8) Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and women news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates to do business.
- 9) Direct its recruitment efforts, both oral and written to minority, women and community organizations, to schools with minority and female students and to minority and women recruitment and training organizations serving the contractor's recruitment area and employment needs.
- 10) Encourage present minority and women employees to recruit other minority and women and, where reasonable, provide after school, summer, and vacation employment to minority and women youth both on the site and in other areas of a contractors' workforce.
- 11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- 12) Conduct, at least annually, an inventory and evaluation at least of all minority and women personnel for promotional opportunities and encourage those employees to seek or to prepare for, through appropriate training, etc., such opportunities.

- 13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.
- 14) Ensure that all facilities and company activities are non-segregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- 15) Document and maintain a record of all solicitations of offers for subcontracts from minority and women construction contractors and suppliers, including circulation of solicitations to minority and women contractor associations and other business associations.
- 16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

Minnesota Housing may inspect the site to confirm the percentage of minority and women laborers.

### **Section 3**

**Work done under the HOME Program is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u). These requirements are described in 24 CFR Part 135.**

A tool for fostering local economic development and individual self-sufficiency, Section 3 requires property owners and their contractors receiving direct federal assistance through HUD to give opportunities for job training and employment to lower income residents in connection with development in their neighborhoods. To the extent possible, contracts should be let to local businesses or locally owned businesses.

The requirements of Section 3 apply to property owners whenever federal assistance for a project will exceed \$100,000; and to contractors and subcontractors whenever the contract or subcontract exceeds \$100,000.

#### **Section 3 Definitions:**

- Section 3 area:
  - for purposes of training and employment, it is the local unit of government, metropolitan area, and non-metropolitan county
  - for contracting, it is the project's metropolitan area or non-metropolitan county
- Section 3 business:
  - located in the Section 3 area
  - or substantially-owned (51%) by Section 3 area residents
- Section 3 resident:
  - any person living in the area who meets the low and very-low income guidelines
  - Youthbuild program participant

#### **Section 3 Goals:**

- 30% of new trainees and hires are Section 3 residents;
- 10% of Section 3 covered contracts for building trades involving maintenance, repairs, or rehabilitation;
- 3% of total dollar amount of all other Section 3 covered contracts is awarded to Section 3 businesses.

Failure to meet these goals does not constitute non-compliance with Section 3, but the burden shifts to the recipients or contractors to show why they could not achieve numerical goals.

Your responsibilities as a property owner receiving federal assistance exceeding \$100,000 are the following:

- Make a good faith effort to use area residents in connection with the development; for example, hire area residents for positions that come available, because of HUD assistance.
- Make a good faith effort to award contracts to local business concerns; maintain records and submit reports to the local administrators documenting these actions. Efforts may include letter to community organizations and employment centers; solicitations for bids and copies of affirmative action plans.
- Incorporate into all Section 3 covered contracts the Section 3 clause, found at 24 CFR 135.38.
- Complete the Section 3 information on the HOME form provided.
- Maintain records documenting the dollar amount of all contracts awarded on the project, the total dollar amount of contracts awarded to Section 3 businesses on the project, and the number of Section 3 businesses receiving contracts, using definitions found on the Contract Compliance Activity Report. This form also reports the number of women and minority employees, vacant positions needing to be filled, and the number of positions filled with low-income area residents.

Contractors/Subcontractors with contracts awards over \$100,000 must do the following:

- Submit a Section 3 Compliance Plan to the local administrator that outlines the efforts to employ and train area residents.
- Maintain records for specific categories for reporting the following:
  - Number of full-time employees hired because of the project
  - Number of Section 3 residents hired full-time
  - Total hours worked by all employees
  - Total hours worked by Section 3 employees and trainees

## **Fair Housing Opportunity**

### ***Affirmatively Furthering Fair Housing***

Local administrators will work with property owners to affirmatively market vacant housing units. Minnesota Housing requires that property owners take specific steps in soliciting renters, determining eligibility, and concluding all transactions. These steps include:

- Outreach to protected groups.
- Marketing strategy that reaches protected groups.
- Self-analysis to make sure all steps are non-discriminatory.

To meet federal requirements, the following procedures relating to non-discrimination and equal opportunity apply during the Effective Period, as that term is defined in the "Declaration of Covenants."

- a) The local administrator and property owner should discuss ways to solicit applications from those least likely to apply; for example, property owners should make efforts to reach out to people not of the race/ethnicity of the neighborhood's residents and yet from populations present in the area.

Such outreach efforts shall involve community organizations, churches, employment centers, fair housing groups, or housing counseling agencies specifically chosen because they provide services to or have as members persons least likely to apply. Minnesota Housing may identify which racial/ethnic groups in the local population are least likely to apply for the housing.

- b) Advertisement of vacant units must include the equal housing opportunity logo or statement. Any photograph should be representative of all people, that is, they should include minority, non-minority, and disabled persons, or be neutral, in the sense that any person looking at it would not feel excluded as a preferred resident. Media may include

newspapers, radio, TV, brochures, leaflets, or simply a sign on a window/bulletin board that is visible to the larger public (signs only visible to current residents may not qualify as advertisements open to the larger public).

- c) The property owner must maintain records containing all efforts taken to affirmatively market vacant units. Such records may include copies of all advertising used, a list identifying race, ethnicity, and gender of tenants occupying the units before and after rehabilitation, and relocation data for displaced persons.

### ***Affirmative Fair Housing Marketing Plan***

Property owners must complete an Affirmative Fair Housing Marketing Plan (AFHMP) for properties with five or more units, as an affirmative marketing procedure. This requirement is incorporated in the written agreement between the property owner and Minnesota Housing for developments of more than five units. The AFHMP will set forth the unit marketing target group and specific actions to be taken to affirmatively market units to those least likely to apply for housing.

### ***Affirmative Marketing and Affirmative Fair Housing Marketing Plan Monitoring***

Minnesota Housing will assess the success of affirmative marketing efforts by comparing actual occupancy data with census data for the city and county of renters from communities of color, people with disabilities, and single female heads of household.

### ***Fair Housing and Housing for People with Disabilities***

Minnesota Housing promotes and abides by all laws and regulations related to accessible housing requirements, from non-discrimination to reasonable accommodations to reasonable modifications to design and construction requirements for covered units.

The federal Fair Housing Act requires that landlords and rental agents make reasonable accommodations in rules, policies, practices, and services to afford a person with a disability equal opportunity to occupy and enjoy full use of a unit, granted there are no prohibitive costs or burdens.

The federal Fair Housing Act requires that persons with disabilities be allowed to make reasonable modifications to the premises at his or her expense, if such modifications are necessary to allow full use of the premises. The landlord may require the renters with a disability to be responsible for reasonable restorations of the interior of the unit to its original conditions, before terminating occupancy. An escrow account can be set up to ensure that funds will be available for that purpose.

Concurrent with non-discriminatory leasing, management, and employment practices, some developments may require certain design provisions and/or construction features to accommodate accessibility and occupancy by mentally or physically disabled tenants.

Where the anticipated costs of rehabilitation for a development consisting of 15 units or more is at least 75% of the development replace costs (excluding land costs), 5% of the dwelling units (at least one unit) must be accessible and adaptable to persons with physical mobility impairments and 2% of the units (at least one unit) must be accessible to persons with hearing/visual impairments. Those accessible units cannot be the same unit, which requires that a minimum of 2 accessible units be made available in those projects. 24 CFR 8.23(a).

For other rehabilitation developments, 24 CFR Part 8.23(b) stipulates, in part:

*...alterations to dwelling units in a multifamily housing development (including public housing) shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. If alterations of single*

*elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a development are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph.*

*Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with handicaps. For purposes of this paragraph, the phrase "to the maximum extent feasible" shall not be interpreted as requiring that a recipient (including a PHA) make a dwelling unit, common area, facility or element thereof accessible, if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project.*

Accessible units must be distributed/scattered throughout the site for full integration and be made available in a range of unit sizes and amenities for comparable choice.

Owners and managers of accessible multifamily housing must promote occupancy of the units by people with disabilities.

Owners and managers must give prior notice to a non-disabled household applying for an accessible unit that priority will be given to a disabled household, should a disabled household request that accessible unit during the term of the lease. If a similar non-accessible unit is available in the same complex at the same rent, the non-disabled household will be asked to move to that other unit. Minnesota Human Rights Act, Section 363A.40.

Applicable laws and regulations are as follows:

1. Federal Law, 29 USC 794: "Section 504 of the Rehabilitation Act of 1973"
2. Federal Regulation, 42 USC 3601, "Fair Housing Act, Title VIII of the Civil Rights Act of 1968"
3. Federal Regulation, 24 CFR Part 8: "Non-Discrimination Based on Handicap in Federally-Assisted Programs and Activities"
4. Covered Multifamily buildings defined in 24 CFR 100.201 must meet the design and construction standards at 24 CFR 100.205
5. Uniform Federal Accessibility Standards (Fed. Std. 795, April 1, 1988)
6. American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People (ANSI 177.1, 1992)
7. Minnesota Accessibility Code, **Minnesota Rules Chapter 1341.**
8. Federal Regulations, 24 CFR 100.203 and 100.204, "Reasonable Modifications and Accommodations."
9. Minnesota Human Rights Act, Chapter 363A.

### ***Fair Housing and Section 8 Vouchers***

Property owners cannot refuse to lease HOME-assisted units to a voucher holder under 24 CFR part 982—Section 8 Tenant-Based Assistance: Housing Choice Voucher Program or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program, because of the status of the prospective tenant as a holder of such voucher, or comparable HOME-tenant-based assistance document.

## Chapter 10 – Davis Bacon Labor Standards

The information introduced in this section is not intended as a full or complete description of your labor standards responsibilities or obligations. It is important to develop a working knowledge of the HUD Labor Standards. You are strongly encouraged to contact your local administrator with any questions that may arise in regard to labor standards issues and compliance.

All people working on a rental housing development that contains twelve (12) or more HOME-assisted dwelling units and receives HOME assistance alone, or in conjunction with other non-federal funding sources, must be paid an hourly rate not less than the minimum rate specified in the wage decision for each particular development. Property owners or general contractors must submit weekly payroll reports and other applicable documents to your local administrator to verify these payments. The completion and submittal of all Labor Standard Requirements is a condition for the release of HOME assistance. When combining HOME assistance with other federal sources, follow the Davis-Bacon standards of the program which applies the standards to the smallest number of units.

Property owners agree to abide by and ensure compliance with the federal labor standards laws and regulatory requirements. The three laws that apply are:

- Davis-Bacon Act—This act requires that workers receive not less than the prevailing wages being paid for similar work in the locality. Prevailing wages are computed by the Department of Labor (DOL) and are issued in the form of federal wage decisions for each classification of work.
- Copeland “Anti-kickback” Act—Workers must be paid at least once a week without any deductions or rebates except permissible deductions, which include taxes, deductions the worker authorized, and those required by court processes. The Act also requires that contractors maintain payroll records and submit weekly payrolls and statements of compliance to the contracting agency. (If contract is over \$100,000)
- Contract Work Hours and Safety Standards Act—Workers must receive overtime compensation at a rate 1 ½ times their regular wage after they have worked 40 hours in one week.

Please refer to the U. S. Department of Housing and Urban Development Office of Labor Relations Desk Guide LR-II for additional information about the laws outlined above. The guide also provides a detailed description of the policies, procedures and responsibilities for the administration and enforcement of labor standards requirements in federally assisted developments. Since labor standards requirements cannot be waived or modified, you should review this material and become thoroughly familiar with its contents. Also available is the publication “Making Davis-Bacon Work, A Contractors Guide to Prevailing Wage Requirements for Federally-Assisted Construction.

### Request for Wage Determination

Each development must receive a wage determination from the U.S. Department of Labor (U. S. DOL). Your local administrator will request a wage determination.

There are two important points to keep in mind:

1. Wage determinations must be included in all bid specifications, bid documents, and contracts. Failure to include a wage determination, or the use of a wrong determination in all bid specifications, bid documents, and contracts, will not relieve the contractor or property owner from potential enforcement action.
2. The property owner must have a formal construction contract with the selected general contractor. A property owner who is also the licensed general contractor must have formal construction contracts with all individual sub-contractors. All construction contracts must



contain Davis-Bacon language binding the contractor to Davis-Bacon requirements (HUD 4010).

General Wage Determinations do not include an expiration date. General wage determinations may be modified by U.S. DOL at any time. Most changes occur on Fridays of each week. For purposes under the Minnesota Housing HOME Program, the "contract award" date, or the date on which a wage decision is considered "locked in," is the date in which the commitment issued from Minnesota Housing to fund the development is signed by the owner. Your local administrator is responsible for ensuring the initial wage decision issued is still applicable at the time of loan commitment. If a property owner fails to use the applicable wage decision they may be liable for the difference between the wage rates used initially in the bid documents and the current rates that may apply. Therefore, Minnesota Housing suggests that property owners verify current wage rates with the local administrator. The contractor and all subcontractors must use applicable wage rates.

Wage modifications received less than 10 days before bid opening will be effective unless there is not enough time to notify bidders. In this case, a written report must be made and inserted in the contract file.

### **HUD Form 4010**

HUD Form 4010 Federal Labor Standards Provisions must be included along with the Wage Determination in all bid specifications, bid documents, contracts and subcontracts. Inclusion by reference is not acceptable.

### **Contractor Debarment**

Before issuing a contract to selected contractors/subcontractors, your local administrator must verify that the contractors/subcontractors are not debarred or excluded from working on federally assisted developments. If the contractor(s) are found to be on either HUD's Limited Denial of Participation list or the Debarment list, they are ineligible to work on your project.

### **Notices for Job Site**

Applicable wage decisions and rates must be posted at the work site for the duration of the contract work. Your local administrator will make one or more site visit to determine that wage rates, notices, and weekly sign-in sheets were posted at the site.

### **Property Owner's Letter Certifying Compliance**

Upon completion, the property owner must submit a letter to the Minnesota Housing certifying compliance with all Davis-Bacon Labor Standards requirements.

### **Required Submittals to the Local Administrator**

Before the initial closing, the property owner must submit a complete list of all contractors/subcontractors to be employed. This list must be updated, as additional subcontractors are determined.

The general contractor must give the local administrator the following weekly:

- A list showing all contractors/subcontractors working on the development during the workweek
- The original weekly payroll report for each contractor/subcontractor with employees working at any time during the week. These submittals must be made no later than seven (7) days following the reporting period covered by the payroll reports. Incomplete or incorrect payroll reports may delay payment.

## Chapter 11 – Environmental Review

HOME activities must be carried out in accordance with the National Environmental Policy Act of 1969 (NEPA) and the provisions of 24 CFR Parts 50 and 58. HOME assistance will not be invested in housing that will have an adverse impact upon the quality of the human or natural environment. Factors reviewed include historic properties, flood plain management and wetland protection, sole source aquifers, endangered species, wild and scenic rivers, noise and air quality, airport clear zones and farmland protection.

The local administrator is responsible for preparing an Environmental Review Record (ERR) and documenting compliance with the requirements of NEPA. The property owner must help provide all relevant documents, public notices, written determinations, correspondence and other information or evidence of action pertaining to the environmental review.

The property owner shall not authorize the commencement of any work until Minnesota Housing has received proper certification of compliance with environmental review procedures and HUD has approved Minnesota Housing's submission of a Request for Release of Funds.

### **Additional Minnesota Housing Environmental Review Requirements**

#### ***Asbestos-containing Materials***

Dwelling units and common areas must be free from friable asbestos-containing materials. Existing materials that are or could become friable must be abated or encapsulated. Asbestos-containing materials that are intact and located in spaces inaccessible to residents may be left intact.

#### ***Phase I Environmental Site Assessment***

Property owners obtaining a Minnesota Housing loan(s) in excess of \$300,000 are required to have a Phase I Environmental Site Assessment per the American Society for Testing and Materials E1527 including lead testing per 24 CFR 35.120 (if built pre 1978) and an asbestos survey with remedies. Such developments must retain a reliance letter from the Assessor.

To assist property owners in successfully complying with Minnesota Housing Environmental Assessment requirements, Minnesota Housing Environmental Assessment policies are available on the website at [http://www.mnhousing.gov/housing/architects/multifamily/MHFA\\_000489.aspx](http://www.mnhousing.gov/housing/architects/multifamily/MHFA_000489.aspx)



## Chapter 12 – Uniform Relocation Act

The purpose of the Uniform Relocation Act (URA) is to provide displaced persons with fair, equitable treatment and protection from disproportionate injury by projects designed to benefit the public as a whole. The URA is a government-wide legislation. This section covers the URA as it applies to HOME assistance.

### Guiding Statutes and Regulations

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA); this applies to displacement that results from acquisition, demolition, or rehabilitation for HUD-assisted projects carried out by public agencies, nonprofit organizations, private developers, or others and real property acquisition for HUD-assisted projects (whether publicly or privately undertaken).
- Section 104(d) of the Housing and Community Development Act of 1974; and
- Individual HUD program regulations.

### Relocation Reference Materials and Resources

- Handbook 1378. Tenant Assistance, Relocation and Real Property Acquisition, issued September 1990. This Handbook consolidates relocation requirements for all HUD programs in one document.
- Handbook 1374. Tenant Assistance, Relocation and Real Property Acquisition, HUD CPD Staff Responsibilities, issued March 11, 1992. This handbook provides instructions for HUD Field Staff for monitoring and technical assistance.

Federal regulations require that all reasonable steps be taken to minimize the displacement of persons (families, individuals, businesses, non-profit organizations and farms) when a development is HOME-assisted. Tenants must be given a reasonable opportunity to lease and occupy decent, safe, sanitary, lead safe and affordable housing in the development when it is completed.

This section provides an overview of these federal requirements and their application to Minnesota Housing's HOME Program. For a more thorough understanding of the regulations pertaining to displacement and relocation assistance, please review the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 at 49 CFR Part 24.

The HOME Program funds rehabilitation to enhance the long-term benefit to the development, property owner(s), and its tenants. Minnesota Housing does not intend to use the HOME Program for permanent relocation benefits. **HOME assistance may be used to rehabilitate structures only if the rehabilitation will not cause the displacement of existing tenants. Therefore, your local administrator will thoroughly review your applications to assess the potential for displacement. You should also take care to follow the policies as given below in providing information to tenants to ensure that permanent relocation benefits are not inadvertently triggered by displacement under the Uniform Relocation Act.** Tenants living in the property at the time of application, as well as any tenants legally moving into the property any time after application, and before development completion, must be informed of their rights. The potential for displacement may be a valid reason not to fund a development. Any permanent relocation expenses will be the sole responsibility of the property owner and will not be considered part of property owner's match.

Certain notices and information must be given to all tenants at specific times throughout development. If these requirements are not followed, tenants could easily move from a development, and be eligible for displacement and relocation assistance.

Any displacement and permanent relocation expenses incurred will be the sole responsibility of the property owner. Minnesota Housing will not authorize the use of HOME assistance for displacement or permanent relocation purposes.

Should tenants be displaced during construction but prior to the release of HOME assistance, Minnesota Housing will refuse to fund the development.

### **Definition of Displaced Person**

The term “displaced person” means any tenant, regardless of income, who is forced to move from the property permanently as a direct result of rehabilitation, demolition, or acquisition of a HOME assisted development. This includes physical displacement caused by overcrowding, loss of a unit, or economic displacement due to an increase in rents.

### **Displacement Triggers**

Displacement occurs when a “person” (or their property) is displaced as a DIRECT RESULT of a federally assisted acquisition, demolition or rehabilitation project.

DIRECT RESULT includes the following:

- The person is required to move from the property after the property owner issues a notice to vacate or refuses to renew a lease in order to avoid relocation assistance (at application or site control if later)
- A person who leaves prior to the date described above who HUD or the grantee determines was displaced as a direct result of rehabilitation, demolition, or acquisition
- The person leaves for whatever reasons after initiation of negotiations AND the necessary notices to assure that the person was fully informed about relocation rights and assistance were not given or were not given in a timely fashion.
- The person leaves the property after initiation of negotiations because of a decent, safe, and sanitary and affordable unit in the property was not offered.
- The person leaves the property because of unreasonable temporary relocation requirements or unreasonable terms for permanent moves within the property.
- A nonresidential tenant who receives a Notice of Non-displacement but moves permanently if the terms and conditions of remaining are not reasonable.

### **Who is Not Displaced**

Persons not displaced include those who:

- Were evicted for cause, BUT not if the eviction is to evade paying relocation assistance.
- Have no legal right to occupy the property (e.g. squatters).
- Occupied the property for the purpose of obtaining relocation benefits.
- Before leasing and occupying the property but after application for project funding, receive written notice of the possibility that displacement or an increase in rent may occur and that relocation assistance will not be provided.
- Retain the right of use and occupancy of the property following acquisition (life estates).
- Waive their rights after being fully informed of their rights.
- Are determined, with HUD’s agreement in writing, not to be displaced as a direct result of the project (e.g. professional relocatees).
- Were required to move out for a short period to facilitate emergency repairs, as long as certain conditions are met.
- Are owner-occupants of the property who move as a result of an arms length (voluntary) acquisition or as a result of voluntary rehabilitation or demolition.
- Leave due to code enforcement, unless the code enforcement results in rehabilitation or demolition for an assisted project. An owner-occupant who is required to move permanently as a direct result of this rehabilitation or demolition may be eligible for relocation assistance.

- After receiving a notice of eligibility, are notified in writing that they will not be displaced. Such a notice cannot be delivered unless the person has not moved and the agency agrees to reimburse the family for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of eligibility.
- Are owner-occupants who voluntarily apply for rehabilitation assistance on their property. When the rehabilitation work requires the property to be vacant for a period of time (such as during lead paint abatement or removal), agencies are encouraged to provide consistent temporary relocation assistance.

## **Temporary Relocation**

Residents who are not required to move permanently may be required to move **temporarily** if all conditions of the move are reasonable. Those to be temporarily relocated must receive “reasonable” advance written notice of the location, terms and conditions of the temporary move and of their right to reimbursement of all reasonable out-of-pocket expenses. Minnesota Housing must review and approve a written plan of action outlining the relocation activity and timelines, including a copy of the notice given to tenants. The notice should suggest comparable units and rents and give information about the timeline, payment for moving expenses, utility hookups, and the option to move back to the original unit after rehabilitation. The property owner must obtain a written response from each household that shows the tenants’ acceptance of the temporary relocation and retain the responses in the development file.

The property owner, with assistance from the local administrator, must prepare an outline of the relocation activity showing tenants’ names, unit number and rent, address, size and rent of the comparable unit, other expenses paid, date of the move, and projected date of the move back to the original unit.

**If these procedures are not followed, a tenant would be considered displaced and eligible for a displacement and relocation payment.** The payment is equal to 42 times the difference between the replacement unit rent plus utilities and the lesser of 30% of the tenant’s adjusted monthly income or the tenant’s pre-rehabilitation rent.

Contact your local administrator for further assistance with temporary relocation.

## **Notice Requirements**

The following notices must be provided to tenants to ensure that the requirement for relocation benefits is not triggered. Retain copies of the notices and document how they were delivered. The following notices are **required**:

### ***Served to Existing Households at Loan Application***

#### **General Information Notice (GIN):**

Served at loan application to existing occupants. This notice informs occupants of the planned rehabilitation activities, the impact on them, the proposed rents, the relocation or rental assistance that may be available to them, and of their rights under the URA. The GIN stresses that the household should not move at the time of notice.

### ***Served to Households that Move in After Loan Application***

#### **Move-in Notice:**

New households must be given a Move-in Notice explaining the project that has been proposed and informs residents that they may be displaced or sustain a rent increase as a result and that they will not be entitled to relocation assistance in either event.

### ***Served to Households at Loan Commitment***

#### **Notice of Non-Displaced:**

This notice informs households who will remain in the project after completion of the assisted activity of their rights and of the terms and conditions of their remaining at the property.

**OR**

**Temporary Relocation Notice:**

This notice informs households who will be temporarily relocated of their rights and of the conditions of their temporary move. This notice includes addresses of comparable replacement apartments, and information on any assistance available.

**OR**

**Notice of Eligibility:**

This notice informs households to be displaced of their rights, levels of assistance, and procedures for obtaining the assistance under the URA.

**90 and 30 Day Notices:**

This notice informs displaced households of the day by which they must vacate the property. Note that displaced households normally may not be given less than 80 days to vacate their residence.

**When and How to Serve Notices**

- Notices must be issued by the property owner.
- Notices must be personally served or sent by certified or registered first-class mail, return receipt requested. (certified mail is less costly)
- It is not enough to have the borrower or property manager state that notices were delivered. There must be evidence of delivery on file for each affected person. Copies must be sent to you.
- If the project will not result in rent increases and will not require temporary or permanent relocation, the general notice and Notice of Non-displacement may be served by posting it in an accessible location and providing a copy to the tenant representative (if applicable).
- Notices should be issued as soon as feasible. To avoid relocation problems administrators should establish policies defining when an application is received.

**After Completion**

Future rent increases must be submitted to you for review and approval to assure that no displacement or relocation will occur. Large rent increases could cause tenants to claim displacement, thereby triggering URA. For more information on Rent Increases, refer to *Chapter 3: General Requirements*.

**Recordkeeping Requirements**

You must have readily available records demonstrating compliance with the URA and applicable relocation regulations. Keep records for at least five years after the later of:

- The date the person has received all of the assistance to which the person is entitled, or;
- The date the development is completed.

The records shall include the following:

- Name and address of all households occupying the property when the application is submitted by the grantee
- Name and address of all persons moving into the property on or after the application date but before completion of the development
- Name and address of all persons occupying the property immediately following completion of the development

- Tenant data should include the occupant's name, address, racial/ethnic group classification, and date of initial occupancy, age, sex, income of all members of the household and monthly rent and utility costs.

**Persons Not Displaced**

Documentation must be sufficient to preclude any possible later claim by a tenant that they were displaced by the development.

**Displaced Persons**

For displaced persons, prepare a separate case file for each affected person.

## Chapter 13 – Management and Leasing

### Lease

For HOME-assisted units, the lease between a tenant and the property owner must be for not less than one year, unless by mutual agreement between the tenant and the property owner.

The local administrator will work with you to revise current leases. Leases may not contain prohibited lease terms as defined below. Use the HOME Lease Addendum (HOME Form 22) to cover the mandatory lease terms and disclosure requirements described in this section.

### Prohibited Lease Terms

A lease may NOT contain any of the following provisions:

#### Agreement to be sued.

- Tenant agreement to be sued, admit guilt, or accept a judgment in favor of the property owner in a lawsuit brought in connection with the lease.

#### Treatment of property.

- Tenant agreement that the property owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to disposition of personal property remaining in the housing unit after the tenant has moved out. The property owner may dispose of this personal property in accordance with state law.

#### Excusing the property owner from responsibility.

- Tenant agreement not to hold the property owner or the property owner's agents legally responsible for actions or failure to act, whether intentional or negligent.

#### Waiver of notice.

- Tenant agreement that the property owner may institute a lawsuit without notice to the tenant.

#### Waiver of legal proceedings.

- Tenant agreement that the property owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

#### Waiver of jury trial.

- Tenant agreement to waive any right to a jury trial.

#### Waiver of right to appeal court decision.

- Tenant agreement to waive right to appeal or to otherwise challenge in court a decision in connection with the lease.

#### Tenant chargeable with cost of legal actions regardless of outcome.

- Tenant agreement to pay attorney fees or other legal costs even if the tenant wins a court proceeding by the property owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

## **Mandatory Lease Terms**

All leases must contain the following provisions:

### HOME Program Tenant Surveys

- On an annual basis, lessee shall certify the household's income and composition by completing and signing a Tenant Survey form which is provided by lessor.
- Lessor may terminate the lease or refuse to renew the lease of a household for failure to supply the completed and signed Tenant Survey form within thirty (30) days of the request.

### Third Party Income Verifications

- Lessee shall sign consents to third party income verification as necessary and reasonably requested by lessor.
- Lessor may terminate the lease or refuse to renew the lease of a household for failure to supply the consent to third party income verification within thirty (30) days of the request.

### Right of Access

- Lessee shall sign an acknowledgement that the Owner, or his/her duly authorized agents, employees or representatives, upon reasonable notice to the Household, shall have the right of access to the Dwelling Unit for the purpose of examining the condition thereof and for making improvements and repairs; and for the purpose of showing the Dwelling Unit for re-rental.

### Lease

- The lessee and lessor shall sign an acknowledgement that the lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.

## **Termination of Tenancy**

The property owner may not terminate the tenancy or refuse to renew the lease of a tenant of a HOME-assisted rental property except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; or for other good cause. For any termination or refusal to renew, the property owner must serve on the tenant a written notice specifying the grounds for the action, at least 30 days in advance of such action, **regardless of Crime-Free Housing Policies.**

## **Maintenance**

The property owner of HOME-assisted rental property must continue to maintain the property with all applicable state and local codes, rehabilitation standards, ordinances, HQS, zoning ordinances and lead based paint standards under 24 CFR Part 35 through the Effective Period.

See Chapter 8: Lead Hazard Evaluation and Reduction for details regarding your ongoing responsibilities to maintain the lead safety of rehabilitated units.

## **Tenant Selection Criteria**

The property owner must adopt written tenant selection policies and criteria that:

- are consistent with the purpose of providing housing for low and very-low income families
- are related to program eligibility criteria and the tenant's ability to perform the obligations of the lease
- give reasonable consideration to families that would have a preference for admission to Public Housing
- provide for selection of tenants from an existing written waiting list in the chronological order of their application

- give prompt written notification to any rejected application of the grounds for any rejection

### **Disclosure Requirements for Lead-based Paint**

The property owner must provide all tenant households with the EPA-approved lead hazard pamphlet *Protect Your Family From Lead in Your Home*. This should be given out at move-in or when the application for HOME funds is made. For tenants residing at the property during renovation, the property owner must also distribute *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools* within 30 days of commencement of the rehabilitation. The property owner must have on file a Lead-Based Paint Acknowledgment of Disclosure signed by the Lessee. The signed Acknowledgement of Disclosure must be retained for three years from the beginning of the leasing period.



## Chapter 13 – Rural Development

Rural Development (RD) properties typically need significant rehabilitation; each of these properties will require RD construction analyst or architectural staff review and approval of the scope of work. Due to the extensive scope of work, interim construction financing is strongly recommended. Below are the following first steps you must take when applying for funds to rehabilitate an RD development:

- Contact the local RD office prior to submitting a HOME Program application to discuss RD's procedure for applying for Federal loans.
- Ensure that RD's construction analyst or architect has inspected the site and assisted with the scope of work.
- For developments obtaining less than \$100,000 in HOME assistance, the property owner will need to obtain written approval from RD to use the development reserves as the 25% match.

The local administrator is required to ensure that RD's construction analyst or architect has inspected the site and assisted with the scope of work.

RD allows over-income tenants to continue to reside in HOME-assisted units, but cannot increase their rents over the stated Note Rate Rent; therefore, RD developments will be structured as mixed-income developments. Minnesota Housing will only allow 80 percent of the units to be financed with HOME assistance when the Note Rate Rents exceed the applicable HOME Program Rent Limits.

### **Example:**

If you have 10 units, only a maximum of 8 units may receive HOME assistance ( $10 \times 80\% = 8$ )

Minnesota Housing does not want to tie up these limited resources; therefore, Minnesota Housing will require that all RD approvals for acquisition be obtained prior to submitting the application. If Minnesota Housing receives an application without the necessary RD approvals, the application will be returned.

After submission of the completed application and required documentation, the local administrator will forward it to Minnesota Housing for review. Minnesota Housing will send an executed "Notice of Default" form to the local administrator who will then forward that form to the appropriate RD office along with their request for junior lien approval.

### **Note:**

Minnesota Housing will not issue a loan commitment until we have received written consent from RD for junior lien approval.

Annually RD performs third-party tenant income verification. The local administrator may obtain and submit RD income verifications for recertification purposes during the Effective Period.

### **Preservation of Rental Assistance**

In addition to the Minnesota Housing HOME Program Declaration of Covenants and Restrictions, any property owner of a development receiving Rental Assistance (i.e. Rural Development, HUD 236, Section 8, etc.) will be required to sign a rental-assistance Declaration of Covenants and Restrictions, which contains restrictive covenants preventing the property owner from opting-out of federal rental assistance contracts.

## **Development Monitoring**

Annually, RD performs third-party tenant income verification. The local administrator may obtain and submit RD income verifications for recertification purposes during the Effective Period.

Annually, RD inspects 20% of its development units. Minnesota Housing will not accept RD inspections and therefore requires the local administrator to inspect the units per the Development Monitoring Scheduled as outlined in Chapter 2, Participation Procedures, of the HOME Rental Rehabilitation Administrative Procedural Manual.